86 - 1198

Supreme Court, U.S.
FILED
DEC 24 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., and
GUILLORY TANK TRUCK SERVICES, INC.

VERSUS

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

OF COUNSEL:

D. A. MOLONY
PATRICIA A. MATHES
Chevron U.S.A. Inc.
935 Gravier Street
New Orleans, Louisiana 70112

December, 1986

OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL
Stockwell, Sievert, Viccellio
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491
Counsel for Appellant,
Chevron U.S.A. Inc.

QUESTIONS PRESENTED

1. As applied to Chevron U.S.A. Inc. ("Appellant"), under the undisputed facts of this case, the decisions of the Louisiana appellate courts, that the liens and writs of sequestration asserted by plaintiffs/appellees pursuant to the Louisiana Oil, Gas and Water Wells lien statute (hereafter the "Louisiana Oil Well Lien Statute"), LSA-R.S. 9:4861, et seq., extend to other unitized portions of appellant's oil, gas and mineral lease *outside* the unit (App. G, infra), [1] to which plaintiffs/appellees provided services or materials, constitute a taking of appellant's property without compensation in violation of the Taking Clause of the Constitution of the United States. [2]

---

[1] The land plat shows the three drilling units created by the Louisiana Commissioner of Conservation pursuant to LSA-R.S. 30:9, and the acreage of appellant's mineral lease (colored) which is contributed to each. It also shows the location of the three unit wells which are referred to hereafter.

[2] The Louisiana trial court held the liens and writs only applied to the portion of appellant's mineral lease in the unit to which appellees supplied services or materials for drilling the unit well. The Louisiana trial court held:

> "k. Plaintifff's rights, if any under LSA-R.S. 9:4861, et seq., should be limited to the acreage of the Wunsch Lease which is included within the S Unit only. It is only that part of the Wunsch Lease included in the S Unit which stood to benefit from the drilling of the R. H. Wunsch No. 1 Well and only that part should be exposed to potential in rem liability to plaintiffs.
>
> l. By attempting to extend any privilege under the subject statute to Wunsch Lease acreage outside the S Unit, plaintiffs are disregarding the effect of unitization and any decision supporting such a position would establish a conflict between the privisions and policies of the Louisiana Conservation Act and the Oil Well Lien Statute.
>
> m. If the Oil Well Lien Statute is interpretted [sic] as sought by plaintiffs, it must be found unconstitutional as depriving Chevron of its property without due process of law and also as depriving Chevron of its equal protection to the laws of the United States and the State of Louisiana." (App. C, infra).

2. As applied to appellant, under the undisputed facts in this case, the decisions of the Louisiana appellate courts, that the liens and writs of sequestration asserted by plaintiffs/appellees pursuant to the Louisiana Oil Well Lien Statute, LSA-R.S. 9:4861, et seq., extend to other unitized portions of appellant's oil, gas, and mineral lease outside the unit to which plaintiffs/appellees provided services or materials, deny appellant equal protection of the laws as prohibited by the Fourteenth Amendment to the Constitution of the United States.

LIST OF PARTIES

1. Appellant - Chevron U.S.A. Inc.; parent company - Chevron Corp; affiliated companies - A.K. Chemie G.m.b.H.; A/S Hydrantanlaegget Koebenhavns Lufthavn, Kastrup; Aircraft Fuel Supply B.V.; AMAX Inc.; Arabian American Oil Company; Aramco Overseas Company; Aramco Services Company; Associated Octel Company (Plant) Limited; Associated Octel Company Limited, The; Atlas Supply Company; Burgan Pension Fund Trustees Limited; Canaport Limited; Cansulex Limited; Canyon Reef Carriers, Inc.; Cetus Corporation; Compania De Niquel Colombiano, S.A.; Coromandel Fertilisers Limited; DE BA - S.p.A. - Industria Petrolifera; Felix Oil Company; Freeport Trading Company Limited; Glen Park Gas Pipeline Company Limited; Hydrant Servicing Company Limited; International Gas Transportation Company Limited; Iranian Oil Participants Limited; Iranian Oil Services (Holdings) Limited; Irving Oil Company, Limited; Irving Oil Limited; Irving Oil Terminals Ltd.; Karonite Chemical Company, Limited; Laurel Pipe Line Company; Long Beach Oil Development Company; Maasvlakte Olie Terminal N.V.; Mainline Pipelines Limited; Marine Agents and Brokers Limited; MARS - Milan Airport Refuelling Services S.p.A.; Mittelland Refinery Limited; N.V. Rotterdam-Rijn Pijpleiding Maatschappij; Nippon Petroleum Detergent Company, Limited; Octel Societe Anonyme; Oil Insurance Limited; Oil Investment Corporation Ltd.; Pembroke Capital Company Inc.; Petrosynthese S.A.; Plantation Pipe Line Company; Raffineria de Roma S.p.A.; Rimbey Pipe Line Co. Ltd.; River Nile Petroleum Company Limited; Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.; Rotterdam-Antwerpen Pipjpleiding (Belgie) N.V.; SARACO S.A.; Saudi Cable Company; SERAM - S.p.A.; Societa per Azione Raffineria Padana Olii Minerali SARPOM; Societe d'Etude et d'Exploitation de la Raffinerie du Tchad; Standard Pacific Gas Line Incorporated; Sultran Ltd.; TAR - Tankanlage Ruemlang A.G.; Trans-Arabian Pipe Line Company; UBAG-Unterflurbetankungsanlage Flughafen Zurich; UNC Incorporated; United Kingdom Oil Pipelines Limited; West Texas Gulf Pipe Line Company.

2. Appellee - LOR, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc.

3. Other Parties - Other parties to the proceeding in the court whose judgment is sought to be reviewed, i.e., the courts of the State of Louisiana, are the following: Martin Exploration Company, F.F.K. Gas & Oil Properties f/k/a F.F.K. Oil Company, and W. R. Fairchild Construction Company, Ltd., and its General Partners, Wiley Fairchild, Charles D. Fairchild, Herbert D. Fairchild and Rodney Fairchild.

NOTICE TO ATTORNEY GENERAL OF STATE OF LOUISIANA THAT CONSTITUTIONALITY OF STATE STATUTE IS DRAWN IN QUESTION

Since the proceeding draws into question the constitutionality of a statute of the State of Louisiana, namely, LSA-R.S. 9:4861, et seq., and neither the State of Louisiana nor any agency, officer or employees of the State of Louisiana is a party, it is noted that 28 U.S.C. 2403(c) may be applicable.

TABLE OF CONTENTS

Questions Presented....ii
List of Parties Pursuant to Rule 28.1....iv
Notice To Attorney General....v
Table of Contents....vi
Table of Authorities....vii
Opinions Below....1
Jurisdiction....2
Constitutional and Statutory Provisions Involved....3
Statement....5
The Questions are Substantial....10
Conclusion....25
Certificate of Service....26
Appendix A....1a
Appendix B....3a
Appendix C....14a
Appendix D....17a
Appendix E....19a
Appendix F....21a
Appendix G....24a

TABLE OF AUTHORITIES PAGE

Agins v. City of Tiburan, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) 11

Crichton v. Lee, 209 La. 561, 25 So.2d 229 (1946)..... 8

R. J. D'Hemecourt Petroleum, Inc. v. McNamara, 444 So.2d 600 (La. 1983), U.S. cert. denied, 469 U.S. 820, 105 S.Ct. 92, 83 L.Ed.2d 39 (1984)..... 24

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106 (1921)..... 2

Dalatte v. Woods, 232 La. 341, 94 So.2d 281 (1957)..... 8

Goldblatt v. Town of Hempstead, 369 U.S. 590, 594, 82 S.Ct. 987, 990, 8 L.Ed.2d 130 (1962)..... 14

Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984)..... 19

Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975)..... 21

Humble Oil & Refining Company v. Jones, 125 So.2d 640 (La. App. 3rd Cir. 1960)..... 7

Hunter Co., Inc. v. McHugh, 202 La. 97, 11 So.2d 495 (1942), aff'd 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed.5 (1943)..... 7,8

JHJ Limited I v. Chevron U.S.A., Inc., 617 F.Supp. 729 (M.D. La. 1985)..... 2,6

Lawton v. Steele, 152 U.S. 133, 14 S.Ct. 499, 38 L.Ed. 385 (1894)..... 14

LOR, Inc. v. Martin Exploration Co., 489 So.2d 1326 (La. App. 1st Cir. 1986), writ denied, 493 So.2d 1217..... 24

PAGE

Loretto v. Teleprompter Manhatten CATV Corp. , 450 U.S. 419, 102 S.Ct. 3164, 73 L.Ed. 868 (1982).....11,12,16

Lynch v. Household Finance Corporation, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), rehearing denied 406 U.S. 911, 92 S.Ct. 1611, 31 L.Ed.2d 822, on remand, 360 F.Supp. 720.....21

Metropolitan Life Insurance Co. v. Warr, 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985).....20

Mire v. Hawkins, 249 La. 278, 186 So.2d 591 (1966).....8

Nunez v. Wainoco Oil & Gas Company, 488 So.2d 955 (La. 1986).....8

Orr v. Orr , 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1978).....2

Penn Central Transportation Co., v. City of New York, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978).....11

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922).....18

Ruckelshaus v. Monsanto, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984).....15,17,20

Rudolph v. Massachusetts Bay Insurance Co., 472 So.2d 1901 (La. 1985).....24

San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).....21

Sargent v. Freeman, 204 La. 997, 16 So.2d 737 (La. 1943)10, 21,25

Scurlock Oil Co. v. Getty Oil Co. , 344 So.2d 1134 (La. App. 3rd Cir. 1977).....9

PAGE

Sellers v. Continental Oil Company, 168 So.2d 435 (La. App. 3rd Cir. 1964).....7

Western & Southern Life Insurance Company v. State Board of Equalization of California, 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 (1981).....24

LOUISIANA STATUTES

LSA-R.S. 9:4861, et seq., Louisiana Oil, Gas and Water Wells Lien Statute ("Oil Well Lien Statute").....3

LSA-R.S. 30:1, et seq.....8,9

LSA-R.S. 30:9.....5,7,8

LSA-R.S. 30:10.....7

LSA-R.S. 30:204.....8

LSA-R.S. 31:6.....7

LSA-R.S. 31:9.....7

LSA-R.S. 31:10.....7

LSA-R.S. 31:213.....7

LOUISIANA CODE OF CIVIL PROCEDURE

Louisiana Code of Civild Procedure Article 2166D.....1

UNITED STATES CODE

28 U.S.C. 1257(2).....3

CONSTITUTIONS

Fifth Amendment, United States Constitution.....3

Fourteenth Amendment, United States Constitution.....3

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

NO. _____

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., and
GUILLORY TANK TRUCK SERVICES, INC.

v.

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The denial by the supreme court of the State of Louisiana (App. A, infra) of a writ of certiorari and/or review filed by appellant is reported at 493 So. 2d 1217.[3] The opinion of the First Circuit Court of Appeal of the State of Louisiana (App. B, infra) is reported at 489 So. 2d 1326. The reasons for judgment of the 21st Judicial District Court in and for

[3] The denial of an application for certiorari by the Supreme Court of the State of Louisiana makes the judgment of a Louisiana court of appeal final and definitive. Louisiana Code of Civil Procedure Article 2166D.

the Parish of Livingston, State of Louisiana (App. C, infra) and the judgments of that court (App. D, infra) are unreported.

A related case, involving appellant and the same constitutional questions, is pending for decision in the United States Fifth Circuit Court of Appeals. Docket No. 86-3043. It has already been argued and an opinion is anticipated. Only the plaintiff is different; the defendants, including appellant, are the same. That case is on appeal from the U. S. District Court for the Middle District of Louisiana. *JHJ Limited I v. Chevron U.S.A., Inc.*, 617 F.Supp. 729 (M. D.La. 1985).

The instant appeal is being taken because it is the only way appellant can be protected. Without this appeal, the decision of the Supreme Court of the State of Louisiana on appellant's constitutional challenge to the Louisiana Oil Well Lien Statute, as applied to appellant in this case, will be final. [4] If the Fifth Circuit Court of Appeals was then to render judgment in favor of appellant in *JHJ Limited I v. Chevron U.S.A.. Inc., supra*, reversing the district court on the constitutional questions raised in these cases, appellant would have then attained the relief it seeks in the federal court system, but been denied that same relief by the Louisiana state courts. There would then be two opposite, contradictory opinions on the identical constitutional questions regarding the application of the Louisiana Oil Well Lien Statute to appellant. It is therefore imperative that appellant take this appeal and that this Court consider the constitutional questions raised.

JURISDICTION

The judgment of the First Circuit Court of Appeal of the State of Louisiana was entered on May 28, 1986. A timely application for writ of certiorari and/or review was filed with the Supreme Court of the State of Louisiana, which denied the application on September 26, 1986. Appellant filed a notice of appeal in the Supreme Court of the State of Louisiana on December 16, 1986. (App. F, infra). The jurisdiction of this court is invoked under 28 U.S.C. 1257(2). [5]

---

[4] *Id*

[5] *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 42 S.Ct. 106 (1921); *Orr v. Orr*, 440 U. S. 268, 99 S. Ct. 1102, 59 L.Ed 2d 306 (1978); and *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L. Ed 2d 482 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jursidiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides in pertinent part:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Louisiana Oil Well Lien Statute provides, in pertinent part, as follows:

"Sec. 4861. Privilege for labor, services or supplies

> Any person who performs any labor or service in drilling or in connection with the drilling of any well or wells in search of oil, gas or water, or who performs any labor or service in the operation or in connection with the operation of any oil, gas or water well or wells,

and the proceeds thereof inuring to the working interest *therein*, and on the oil, gas or water well or wells and *the lease whereon the same are located*, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached or located on the lease, for the amount due for labor or service, in principal and interest, and for the cost of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection. Any person who does any trucking, towing, or barging, or who makes any repairs, or furnishes any fuel, drilling rigs, standard rigs, machinery, equipment, material or supplies for or in connection with the drilling of any well or wells in search of oil, gas, or water, or for or in connection with the operation of any oil, gas or water well or wells, whether or not a producing well is obtained and whether or not such materials, machinery, equipment, services and supplies are incorporated in or become a part of the completed oil, gas or water well, has a privilege on all oil or gas produced from the well or wells and the proceeds thereof inuring to the working interest therein and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks and other structures thereto attached for drilling, equipment and operation of the well or lease, for the amount due for such trucking, towing, barging, repairs, fuel, drilling rigs, standard rigs, machinery, equipment, material, or supplies, in principal and interest, and for the cost of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection thereof. This privilege is second in rank only to the privilege granted in favor of laborers." (Emphasis ours)

STATEMENT

A. The Issues For Consideration

This case involves the question of whether the extension of lien rights and writs of sequestration, pursuant to the Louisiana Oil Well Lien Statute, to those unitized portions of an oil, gas and mineral lease in favor of appellant lying beyond the unit to which the services and/or labor of appellees were furnished, deprives appellant of its constitutional rights. If the ruling of the Louisiana appellate courts, reversing the Louisiana trial court and sustaining the position of appellees, is allowed to stand, appellant's production or proceeds of production attributable to its working interest in that lease, in the other units where appellees did not contribute labor or materials, will be taken. Clearly, this constitutes a taking of appellant's property without compensation and a denial of equal protection of the law.

B. Statement Of Facts And History Of Proceedings

Appellees seek judicial recognition of liens and enforcement of writs of sequestration filed by each of them under the provisions of the Louisiana Oil Well Lien Statute in five separate, but later consolidated, suits filed in the Twenty-First Judicial District Court for the Parish of Livingston. [6] Appellees seek enforcement of their liens and writs of sequestration against the working interest of appellant in and to that certain oil, gas and mineral lease, dated November 10, 1973, which appellant acquired from Robert H. Wunsch, et ux, (hereinafter sometimes called the "Wunsch lease") and which affects approximately 127 acres of land situated in Livingston Parish, Louisiana, portions of which are included in three (3) different drilling units formed by the Louisiana Commissioner of Conservation under authority of LSA-R.S. 30:9. [7]

The claims of appellees result from materials supplied and/or labor performed in drilling the R. H. Wunsch No. 1 Well, the unit well for the 16,700' TUSC RA SU S Unit (the "S" Unit"), established by Order No. 1084-A-3 of the commissioner.

---

[6] All five (5) suits were filed on June 22, 1983.

[7] *See* App. G, infra.

In the trial court, appellees asserted liens under the Louisiana Oil Well Lien Statute, and, subsequently, had writs of sequestion issued seizing (1) appellant's Wunsch lease, (2) all oil, gas or other minerals produced from the Wunsch lease, (3) the proceeds of the sale of any oil, gas or other minerals produced from the lease, and (4) all oil, gas and other minerals produced from the well for which their labor, services and/or supplies were furnished. Appellant's portion of the proceeds of production from the unit wells of two other closely situated units created by order of the Commissioner, i.e., the F and H Units, is being sequestered and subjected to execution by appellees in order to satisfy the claim of appellees.

Appellant then filed a motion to dissolve and/or modify the liens and the writs of sequestration filed by appellees. After a trial on the motion, on December 7, 1984, the trial court rendered separate judgments, [8] together with written reasons in support of same, and made findings of facts which are set forth in Appendix C, infra.

Appellees appealed and on May 28, 1986, the Louisiana First Circuit Court of Appeal rendered its opinion reversing the trial court and rendered judgment in favor of appelless. 489 So.2d 1326. The findings of fact made by the Louisiana trial court were not disturbed. In making their decision, the Louisiana appellate courts interpreted the Louisiana Oil Well Lien Statute as urged by appellees. The Louisiana First Circuit Court of Appeal recognized the constitutional question raised by appellant. 489 So.2d at 1330-1331.

The Louisiana First Circuit Court of Appeal relied on the erroneous opinion in *JHJ Limited I v. Chevron U.S.A., Inc., supra*, to uphold the constitutionality of the Louisiana Oil Well Lien Statute as applied to the facts in this case.

Appellant timely filed an application for writ of certiorari and/or review to the Louisiana Supreme Court which was denied, without opinion, on September 26, 1986. [9]

Appellant was not a party to the contracts between Martin and appellees. In fact, appellant chose not to participate in the drilling of that well, either as a contributing working interest owner or as a joint venture participant with Martin. As such, appellees consented to a judgment in

---

[8] *See* App. D, infra.

[9] *See* App. A, infra.

the Louisiana trial court which holds that *appellant has no personal liability to appellees* for any of the claims asserted by them in these proceedings. (App. E, infra). Appellant's liability, if any, is *in rem* under the provisions of the Louisiana Oil Well Lien Statute. It arises, even according to appellees, solely because the R. H. Wunsch No. 1 Well, the unit well for the S Unit, is located on the Wunsch lease by order of the Commissioner of Conservation.

In addition to the S Unit, the Wunsch lease also contributes acreage to the H Unit and F Unit, both established by Order No. 1084 of the Louisiana commissioner of Conservation. Both of these units are operated by Amoco. This unit well for the H Unit is the Davidson-Buckel Well No. 1. The unit well for the F Unit is the Buckel Well No. 2 (formerly the P.E. Martin Well No. 1). Appellant's Wunsch acreage and the share of production attributable to that lease acreage in the H and F Units have been seized by appellees pursuant to the writs of sequestration.

C. Louisiana Conservation Laws

Under Louisiana law, ownership of land does not include ownership of oil, gas and other minerals; the landowner does, however, have the exclusive right to explore and develop his property for the production of such minerals and to reduce to them to possession and ownership. LSA-R.S. 31:6. The "exclusive right to explore" is qualified by the imposition of duties with regard to others who have rights in the common reservoir. LSA-R.S. 31:9 and 10.

A unit, as defined by LSA-R.S. 31:213, is developed for the joint benefit of all whose respective interests are pooled to make development of the unitized lands possible. *Humble Oil & Refining Company v. Jones*, 125 So.2d 640 (La. App. 3rd Cir. 1960).

Unitization orders of the Louisiana Commissioner of Conservation divide oil, gas and mineral leases for operational purposes. *Sellers v. Continental Oil Company*, 168 So.2d 435 (La. App. 3rd Cir. 1964).

The commissioner's power to establish drilling units is a constitutional exercise of the state's police power. *Hunter Co., Inc. v. McHugh*, 202 La. 97, 11 So.2d 495 (1942), aff'd 320 U.S. 222, 64 S.Ct. 19, 88 L.Ed 5 (1943). The commissioner has the authority to limit

the number of wells to be drilled, fix the location of the wells drilled, and establish drilling and production units without regard to property lines or areas included within leases. Importantly, the commissioner is authorized to designate a drilling site "at the optimum position in the drilling unit for the most efficient and economic drainage of such unit." LSA-R.S. 30:9C. Under Louisiana law, the commissioner issues a permit before the well is drilled and "the issuance of the permit...is sufficient authorization to the holder of the permit to enter upon the property covered by the permit and to drill in search of minerals thereon." LSA-R.S. 30:204A and F.

Commissioner's Order No. 1084-A-3, dated October 15, 1981, unitized that portion of appellant's Wunsch lease included within the boundaries of the S Unit. It contains, among other provisions, the following:

> "2. The separately owned tracts, mineral leases and other property interests within the units created herein are hereby pooled, consolidated, and integrated in accordance with Section 10, Title 30 of Louisiana Revised Statutes of 1950, with each tract sharing in unit production in the proportion that the surface area of such tract bears to the entire surface of said unit. Also, all operations on and production from each unit shall be considered operations on and production from each of the separate tracts within said unit and under the terms of each of the mineral leases affecting said tracts."

The delegation of authority to the commissioner to form such units, and to include in such unit orders the language quoted above, has been sustained by the Supreme Court of Louisiana, *Crichton v. Lee,* 209 La. 561, 25 So.2d 229 (1946), *Nunez v. Wainoco Oil & Gas Company,* 488 So.2d 955 (La. 1986), and by the Supreme Court of the United States, *Hunter Co., Inc. v. McHugh, supra.*

In *Delatte v. Woods,* 232 La. 341, 94 So.2d 281 (1957), the Louisiana Supreme Court said:

> "It is firmly established in our jurisprudence that statutory authority is granted to the Commissioner of Conservation to create drilling developmental units and to integrate various tracts of various owners contained in

> such units, that the orders of the Commissioner *supercede, supplement, replace* and are incorporated in the provisions and obligations of contracts and leases relating to mineral development. LSA-R.S. 30:1, et seq." (Emphasis added)

94 So.2d at 287.

Compulsory unitization converts separate interests within the drilling unit into a common interest with regard to the development of the unit and the drilling of the well. *Mire v. Hawkins*, 249 La. 278, 186 So.2d 591, 596 (1966).

D. Appellees Seek The Benefit Of Unitization But Deny The Effect

In this case, portions of the Wunsch lease have been included within the F, H and S Units formed by the Commissioner of Conservation. The *only well* physically located on the Wunsch lease is in the S Unit; that is, the R. H. Wunsch No. 1 Well, the well for which appellees' services were rendered and materials supplied. Under Louisiana's scheme of unitization, only that portion of the Wunsch lease which was included within the boundaries of the S Unit would have been entitled to share in production from the R. H. Wunsch No. 1 Well had it been successfully completed as a producer. Martin itself, the operator of the R. H. Wunsch No. 1 Well in the S Unit, would not have had the right to collect the cost of drilling that well out of production or the proceeds of production attributable to appellant's Wunsch lease acreage situated within the F and H Units. [10] Appellees, who only supplied materials to Martin, claim to have greater rights than Martin.

Neither of the unit wells for the F and H Units is physically located on the Wunsch lease. Appellees admit that they did not render any service in connection with the drilling of either of these two wells. Appellees, therefore, must admit that without unitization they would have no claim on the Wunsch lease's share of production from the F and H Units.

---

10 *Scurlock Oil Co. v. Getty Oil Co.*, 344 So.2d 1134 (La. App. 3rd Cir. 1977).

However, since only that portion of the Wunsch lease which is included within the boundaries of the S Unit stood to benefit from the drilling of the R. H. Wunsch No. 1 Well, only that portion of the lease should be exposed to potential in rem liability for the liens claimed by appellees. Any other result makes the statute unconstitutional, for it imposes upon the entirety of appellant's Wunsch lease in rem liability for the payment of the costs to drill the S Unit well, when a significant portion of the lease would never have participated in the production from the S Unit well had it been completed as a commercial producer. No other working interest owner in the S Unit is exposed to any similar liability. The cornerstone of appellees' argument, therefore, is that they seek the benefit of unitization but at the same time they disregard the effect of unitization.

THE QUESTIONS ARE SUBSTANTIAL

A. The Constitutional Issues Herein Have Never Been Considered

Although there have been attacks on the constitutionality of the Louisiana Oil Well Lien Statute, it must be noted that neither *Sargent v. Freeman*, 204 La. 997, 16 So.2d 737 (La. 1943), the leading Louisiana case, nor any other authority, has addressed the precise issue presented in this appeal: Whether appellees, who only furnished materials and services in drilling the unit well for the S Unit, have a right to be paid out of appellant's share of production or proceeds of that production attributable to its Wunsch lease acreage in the F and H Units in spite of the fact that appellees did not furnish any materials or services in drilling those wells. The facts of this case are unique, and the constitutional issues raised are of first impression.

Appellees contend that their liens and writs affect the entire Wunsch lease, despite the unitization of portions of that lease in three different units. By asserting their liens and writs on the production or proceeds thereof attributable to Wunsch lease acreage in the F and H Units, not the S Unit, appellees are, in effect, demanding that appellant pay in cash, or its equivalent, a portion of the cost to drill the unit well for the S Unit. None of the other mineral owners in the S Unit is exposed to any similar liability.

B. The Statute As Applied To The Facts Of This Case Violates The Taking Clause Of The Fifth Amendment

The opinions of the Louisiana appellate courts are fatally flawed because they were premised on an analysis that is fundamentally inconsistent with the analysis developed by this court in a long line of decisions addressing the constitutionality of legislative action in the context of a challenge based on a taking of private property without compensation.

1. The Two-Step Analysis to Determine Violation of the Taking Clause Was Not Employed

This Court has consistently held that a constitutional challenge to the exercise of legislative power on the ground that it operates as a taking without compensation requires a two step analysis. [11] First, a legislative act is scrutinized in order to determine if it represents a rational exercise of inherent police power. An act determined to be an irrational exercise of the police power may be facially unconstitutional and, therefore, no further scrutiny of the act is necessary. However, even if the act is constitutional on its face, the second level of analysis requires the court to assess the impact of the act on the affected property. Thus, even if the act is found to be a legitimate exercise of legislative authority, it may be unconstitutional as applied if it operates as a total deprivation of the use or value of the affected property, or results in the use or occupation of the property without compensation.

The Louisiana appellate courts did not employ this two step analysis. Apparently, they merely concluded that the statute represented a rational exercise of legislative authority that had survived constitutional challenges in the past, although none of those cases dealt with the interplay between the actions of the commissioner under the Louisiana Conservation Act and the claims of appellees under the Louisiana Oil Well Lien Statute.

---

[11] *Penn Central Transportation Co., v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); *Agins v. City of Tiburan*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed. 868 (1982).

Absent from the opinion of the Louisiana appellate courts is any analysis of the seizure of appellant's property lying *outside* the S Unit (appellant's Wunsch lease and its share of production from the F and H Units), and the resulting economic loss suffered by appellant. A court faced with a challenge to legislative action on the ground that the action takes property without compensation must engage in a complete assessment of the impact of the act on the affected property. It is not sufficient to recognize the legitimacy of the act, and thus conclude that its legitimacy *ipso facto* precludes a taking. In order to withstand constitutional scrutiny the act must represent a legitimate exercise of authority *and* must not deprive appellant of the use of its property.

The clearest and most forceful recognition of this two step analysis is found in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed 2d 868 (1982). After acknowledging the New York Court of Appeals' conclusion that the statute was within the state's police power as serving "important educational and community" purposes, this Court stated:

> "We have no reason to question that determination. It is a separate question, however, whether an otherwise valid regulation so frustrates property rights that compensation must be paid. . . . We conclude that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve. Our constitution and history confirms the rule, recent cases do not question it, and the purposes of the Taking Clause compel its retention." (Citations omitted).

458 U.S. at 425, 102 S.Ct. at 3170-3171.

Unlike the analysis employed in *Loretto, supra,* Louisiana's First Circuit Court of Appeal concluded that the Louisiana Oil Well Lien Statute is a rational exercise of legislative power and then glossed over - or perhaps even ignored - the crucial and determinative issue of the impact of the statute on appellant's property. Simply stated, the net benefits of the statute do not override or diminish the legal significance of

the fact that appellant's production or the proceeds thereof attributable to its Wunsch lease in *other* units has been seized and will be used to satisfy debts that appellant had absolutely nothing to do with. Appellees, however, contributed nothing to the development and production of the F and H Unit wells. Under Louisiana's laws of unitization, appellees are not entitled to lien appellant's Wunsch lease share of production from the F and H Unit wells because they contributed nothing to the development of those units. The opinion of the Louisiana trial court recognized this injustice.

The Louisiana Oil Well Lien Statute cannot even survive the first level of analysis because, although the legislature's purpose in enacting the statute may be legitimate, the means employed to serve that legitimate purpose in this case are irrational. Lien claimants, like appellees, should not have security rights to production from wells for which they contributed nothing.

Appellant's property, i.e., its share of production from the F and H Units, is impacted because under the rulings of the Louisiana appellate courts, appellant's property is going to be liable for the entire cost to drill the S Unit well, the R. H. Wunsch No. 1 Well, when appellant refused to participate with Martin in the cost of drilling that well and had no direct contractual relationship with appellees. Appellant's liability under the rulings is derived solely because the S Unit well was located on Wunsch lease acreage in the S Unit. Appellant had nothing to do with locating the S Unit well on its Wunsch lease. The Commissioner of Conservation has the authority to fix the unit well location, without approval of mineral owners in the unit, and he did so in this case, without appellant's input or concurrence. Conversely, under the decisions of the Louisiana appellate courts, the appellees will be allowed to recover for services and materials supplied only to the S Unit well, from production (off the Wunsch lease) in other units when they contributed nothing to the drilling and production of those wells and when Louisiana law otherwise precludes appellees from sharing in the benefits derived from the F and H Units, since they contributed nothing to their development.

The court failed to take into consideration the full import of unitization. Thus, the statute is unconstitutional under the second step of analysis.

a. The Statute as Interpreted Is Not a Rational Exercise of Governmental Authority.

The threshold question is whether the Louisiana Oil Well Lien Statute is a legitimate exercise of the state's inherent police power. The Court in *Goldblatt vs. Town of Hempstead,* 369 U.S. 590, 594, 82 S.Ct. 987, 990, 8 L.Ed.2d 130 (1962) recognized that:

> "The term 'police power' connotes the time-tested conceptual limit of public encroachment upon private interests. . . . The classic statement of the rule in *Lawton vs. Steele,* 152 U.S. 133, 137, 14 S.Ct. 499, 501, 38 L.Ed. 385 (1894), is still valid today:
>
> "To justify the state in. . .interposing its authority in behalf of the public, it must appear - First, that the interests of the public. . .require such interference; and, second, that the means are reasonably necessaary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

Evaluation of a statute requires a review of its purpose and the availability of alternative protective measures. While, as a general rule, the Louisiana Oil Well Lien Statute represents a legitimate exercise of the state's police power, as applied to the facts of this case, it is irrational to allow the seizure and sale of production from a well, for which appellees provided no services or materials, to satisfy their claims for payment of services and materials rendered in drilling another well. Such an application of the statute will allow appellees to collect from appellant personally, as if appellant had contracted with them directly and there were no other mineral owners in the S Unit who are responsible for at least a portion of appellees' claims.

The Louisiana Oil Well Lien Statute was never intended to guarantee payment to claimants like appellees. Rather, it was only intended as a balancing of interests. Alternative means of protecting parties such as appellees are readily available. They could have demanded that Martin provide a payment bond to secure Martin's obligation to pay them for services and materials provided in the drilling of the R. H. No. 1 Well, or appellees could have demanded that Martin

obtain a letter of credit to secure their claim. They could have also demanded that Martin pay them in cash at the time they rendered services or supplied materials. Appellees could also have taken an interest in the production from the well in lieu of extending credit to Martin for their services and materials. Furthermore, oil field suppliers of materials and labor would be reasonably protected by limiting the reach of the Louisiana Oil Well Lien Statute to the portion of the lease in the unit on which the well is drilled, as the trial court recognized.

The most important factor, however, is the loss suffered by appellant. The effect of the seizure of its interest in production from the F and H Units is that appellant will be deprived of the right to possess, use and dispose of that production. This Court has consistently held that governmental action resulting in the deprivation of fundamental property rights constitutes a taking.

b. The Louisiana Appellate Courts Interpreted the Statute Without Considering the Impact of The Decision on Appellant's Property

In addressing the constitutionality of a statute where an uncompensated taking is at issue, this court outlined the considerations used in its analysis. Those considerations are (a) whether appellant has a property interest protected by the Fifth Amendment's taking clause, (b) whether application of the Louisiana Oil Well Lien Statute effects a taking of that property, (c) whether the taking is for public use, and (d) whether the statute provides just compensation for the taking. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984).

Appellant's protected property interest is all of that portion of its Wunsch lease lying outside of the boundaries of the S Unit. Only the portion of Appellant's Wunsch lease lying within the boundaries of the S Unit stood to benefit from the drilling of the S Unit well. Also protected is appellant's property interest in and to the production and proceeds of production attributable to appellant's Wunsch lease acreage in the F and H Units, where these unit wells are not even physically located in the Wunsch lease.

Louisiana law provides that the lien created by the statute may be enforced by a writ of sequestration, and seized property can be sold to satisfy a judgment in favor of the supplier of materials and labor. The decision of the Louisiana appellate courts, allowing an extension of the liens and writs to portions of appellant's Wunsch lease included within the boundaries of the F and H Units, will deprive appellant of its right to the production from wells located *off* the Wunsch lease in those units. The effect of that decision results in a confiscation of appellant's production or proceeds thereof attributable to its working interest in the F and H Units. Not only does the government "occupy" appellant's property in the sense of denying it the use of proceeds of production attributable to its working interest participation in the F and H Units, but the proceeds of production will be taken from appellant.

The constitutional doctrine that government authorized occupation of property constitutes a taking is illustrated by *Loretto vs. Teleprompter Manhattan CATV Corp.*:

> "Property rights in a physical thing have been described as the rights to possess, use and dispose of it. . . .To the extent that the government permanently occupies physical property, it effectively destroys *each* of these rights. . .
>
> "Moreover, an owner suffers a special kind of injury when a stranger directly invades and occupies the owner's property. . .[P]roperty law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property. To require, as well, that the owner permit another to exercise complete dominion literally adds insult to injury." (Citations Omitted).

458 U.S. at 435-436, 102 S.Ct. at 3176.

The Court then concluded:

> "Our cases further establish that when the physical intrusion reaches the extreme form of a permanent physical occupation, a taking has occurred. In such a case, 'the character of the governmental action' not only is an important factor in resolving whether the action works a taking but also *is determinative.*" (Emphasis added).

Id. at 426, 102 S.Ct. at 3171.

This Court, in *Ruckelshaus, supra,* has recently recognized several factors which merit consideration in determining whether governmental action effects a taking of property in violation of the Fifth Amendment.

> "Among those factors are 'the character of the government action, its *economic impact,* and its interference with *reasonable investment-backed expectatons*'" (Citations omitted, emphasis ours).

478 U.S. at _____, 104 S.Ct. at 2875.

No serious argument exists concerning the severity of the economic impact which the decision of the Louisiana appellate courts has imposed upon appellant. Without question, appellant was a non-participating mineral owner in the S Unit, and took no actions whatsoever in concert with Martin in the drilling of the S Unit well. To the contrary, the decision by the Commissioner of Conservation, creating the unit and designating the drill site of the S Unit well on the Wunsch lease, provided Martin with the authority to drill the S Unit well on the Wunsch lease, regardless of appellant's acquiescence or objection. On the other hand, appellant made a conscious, economic decision to participate with Amoco in the drilling of the F and H Unit wells. It reasonably expected its investment in the F and H Unit wells to make a reasonable return. The economic impact of the decision of the Louisiana appellate courts will be to deny appellant its right to use and dispose of revenues (derived from production in the F and H Units) where it had reasonable investment-backed expectations, but allow appellees to use those same revenues to recover for their services and materials in the

drilling of the R. H. Wunsch No. 1 Well, where appellant had refused to participate.

Neither the legislative history of the statute [12] nor common sense construction of its provisions could have alerted appellant to the liability for the drilling cost of the S Unit well, which the Louisiana appellate courts have effectively levied against appellant. The imposition of those costs on appellant, through the strained application of the Louisiana Oil Well Lien Statute, as affected by the Louisiana Conservation Act, ignores the reasonable expectations of companies such as appellant in the procurement and development of oil and gas leases, and further results in a taking of property without compensation, in violation of the Fifth Amendment.

Even if this Court concludes that the seizure of appellant's share of proceeds of production from the F and H Units pursuant to the statute falls short of being a permanent occupation of production or proceeds thereof inuring to its working interest participation in those units, but instead represents a regulation of appellant's use of its property, it is well settled that "if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922). The Louisiana Oil Well Lien Statute does not merely regulate the use of appellant's property, it sanctions and legitimates a deprivation of appellant's right to possess, use and dispose of its property. In effect, the statute results in a confiscation of appellant's Wunsch lease participation in two unit wells neither serviced by appellees nor located on the lease as required by the statute in the first place.

In *Pennsylvania Coal Co. v. Mahon , supra*, a Pennsylvania statute prevented coal companies from mining coal in such a way as to

---

12 The original Louisiana Oil Well Lien Statute was adopted by the Legislature in 1916 and repealed in 1950. See: 1916 La. Acts No. 232, repealed by 1950 La. Acts No. 210. Subsequent amendments to this legislation can be found at 1928 La. Acts No. 171, 1932 La. Acts No. 161 (adding to the list of property made subject to the lien "* * * the lease whereon same are located * * *"), 1934 La. Acts No. 145, 1940 La. Acts No. 100, 1942 La. Acts No. 68, 1956 La. Acts No. 100, 1958 La. Acts No. 23, 1960 La. Acts No. 31, 1983 La. Acts No. 374 and 1984 La. Acts No. 949.

cause the subsidence of certain surface structures. As applied, the statute prevented Pennsylvania Coal Co. from mining the entirety of the affected tract. After recognizing the legitimate purpose served by the statute, the Court nevertheless found a taking without compensation because the value of the coal company's property had been destroyed, i.e., coal carried no value if it could not be mined. That precise reasoning is equally applicable to the facts of the present case.

The public use requirement of the Taking Clause of the Fifth Amendment requires that the purpose of the action must be designed to realize an object the government is authorized to achieve. In *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186, (1984), this court held that a statute which created a land condemnation scheme whereby title to real property was taken from lessors and transferred to lessees, did not violate the "public use" requirement of the Fifth Amendment for taking of private property. However, this court correctly reasoned:

> "The State of Hawaii has never denied that the Constitution forbids even a compensated taking of property when executed for no other reason than to confer a private benefit on a particular party. *A purely private taking could not withstand the scrunity of the public use requirement; it would serve no legitimate purpose of government and would thus be void."* (emphasis ours).

467 U.S. ___, 104 S.Ct. at 2331. The application of the Louisiana Oil Well Lien Statute in this case, under these facts, to appellant, benefits a particular class of indentifiable, private individuals by summarily depriving appellant of its property interest. It is a purely private taking.

In *Hawaii Housing Authority v. Midkiff, supra,* the critical factor which allowed the Hawaii Land Reform Act to satisfy the public use requirement of the Fifth Amendment was the statute's attack on certain perceived evils of concentrated property ownership. No similar justification exists in this present case. The statute, as interpreted, operates to deprive appellant of its property derived from production in the F and H Units, to the benefit of lien claimants who in no way contributed to such production.

The fourth inquiry outlined in *Ruckelshaus, supra,* concerned whether the statute at issue adequately provided for just compensation to the property owner. As this discussion has already shown, the Louisiana Oil Well Lien Statute does not purport to provide any compensation to appellant for property outside the S Unit which is taken by the effect of the decision of the Louisiana appellate courts.

2. To the extent it conflicts with the Louisiana Conservation Act, the Louisiana Oil Well Lien Statute is unconstitutional

The conflict between the Louisiana Oil Well Lien Statute and the Louisiana Conservation Act has not been resolved by the Louisiana appellate courts. If the decision is allowed to stand, appellant will be permanently deprived of the use and value of its property outside the S Unit. Application of the two-step analysis developed by the Court reveals that this deprivation constitutes a taking without compensation, prohibited by the Constitution of the United States. The Louisiana Oil Well Lien Statute should be declared unconstitutional as applied in this case.

C. The Statute As Applied To The Facts Of This Case Violates The Equal Protection Clause Of The Fourteenth Amendment

The United States Constitution guarantees that all persons similarly situated be dealt with alike and prohibits arbitrary discrimination between persons similarly situated. However, in the face of that guarantee, appellant has been treated unequally.

The protection afforded by the constitutional guarantee of equal protection is applicable to corporations like appellant. *Metropolitan Life Insurance Co. vs. Ward,* 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985). Thus, Chevron is entitled to demand that the exercise of the state's police power, i.e., the seizure of private property as authorized by the Louisiana Oil Well Lien Statute, be subject to the constitutional limitation that the State of Louisiana shall not deny the equal protection of the law to any person within its jurisdiction.

This Court must conclude that the classification established by the State of Louisiana, i.e., lien claims against the leases whereon the well is located, is arbitrary in terms of the permissible aims of governmental action where, as here, such a lease participates in more

than one unit, and where principles of law relating to unitization declare that all operations from a unit are considered operations on each lease within said unit. [13]

Appellant's right to the enjoyment, use, and control of its property is a fundamental right protected by the equal protection guaranty of the Constitution. In *Lynch vs. Household Finance Corporation,* 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), rehearing denied 406 U.S. 911, 92 S.Ct. 1611, 31 L.Ed.2d 822, on remand, 360 F.Supp. 720, this court ruled that the right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a "personal" right. This court reasoned:

> "Property does not have rights. People have rights. ... In fact, a fundamental interdependence exists between the *personal right to liberty and the personal right in property.* That rights in property are *basic civil rights* has long been recognized." (Citations omitted, emphasis ours)

405 U.S. at 553, 92 S.Ct at 1122. Because a fundamental right of appellant is jeopardized by the statute, strict scrutiny of the statute is mandated. [14]

The Louisiana Oil Well Lien Statute, as it has been interpreted to apply against appellant, cannot withstand the "strict scrutiny" test. Under this test, the Court must consider whether the statute is necessary to promote a compelling state interest, whether the means contemplated by the statute to achieve its goal are the least intrusive or restrictive means available, and whether the seizure of property authorized by the statute is necessary to achieve the purpose contemplated by the legislation.

The legislature's intent in enacting the Louisiana Oil Well Lien Statute was recognized in *Sargent v. Freeman , supra.* The statute is intended to protect suppliers of services and materials who furnish those

---

[13] Louisiana Commissioner of Conservation Order No 1084-A-3 dated October 15, 1981. See Section C under "Statement," infra.

[14] *San Antonio Independent School District v. Rodriquez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973).

services or materials in connection with drilling a well, although there are alternative means available for their protection. However, the statute does not contemplate unitization, under which principles all of the mineral interests in a unit are to contribute, either up front in cash, or from their share of the proceeds of production if the unit well is a producer, to the cost of drilling the unit well. The Louisiana Conservation Act establishes the framework under which mineral owners with an interest in a drilling unit participate or refuse to participate in the drilling of a well, and the method by which their share of the cost of drilling and producing the unit well is calculated. LSA-R.S. 30:10A(2)(b)(i). In this case, of all the mineral owners in the S Unit, only appellant's Wunsch lease acreage is affected under the interpretation of the statute by the Louisiana appellate courts, simply because the Commissioner of Conservation fixed the drill site location on the Wunsch lease. Appellant had no input into that decision by the commissioner, who by law, has the right to fix the drill site location in a unit.

Louisiana has an interest in protecting suppliers of labor and materials for the drilling of oil wells, but only to the extent of the unit boundaries, created by the Louisiana Conservation Act, to which those suppliers contributed their materials or services in drilling the unit well. Therefore, the first predicate question, whether the statute is necessary to promote a compelling state interest, must be answered in the negative.

Similarly, the second inquiry in the strict scrutiny analysis, whether the means contemplated by the statute to achieve its goal are the least restrictive and intrusive means available, must also be answered in the negative. Without question, the operation of the Louisiana Oil Well Lien Statute must be subordinate to the unit boundaries created by the Commissioner of Conservation. Any other result places the two statutes in direct conflict.

This is not a case of a lien claimant seeking payment for his services from the actual well which received those resources. On the contrary, the lien claimants in this case, appellees, are attempting to recover payment for their services from wells located on different leases and in different units. This expansive interpretation of the Louisiana Oil Well Lien Statute given by the Louisiana appellate courts is the *most intrusive* interpretation possible. Their decision simultaneously recognizes the principle of unitization (allowing appellant to receive production from wells off the Wunsch lease, solely because a portion of

the Wunsch lease is in the F and H Units), while ignoring the unit boundaries (of the S Unit) created by unitization. Under unitization principles, all mineral owners in the S Unit either participate with the operator (Martin) in the cost of drilling the unit well or their share of production, if the well is a producer, bears their share of the cost of the well before distribution of production to them by the operator. Non-participating mineral owners, at least, are being treated differently than appellant under the rulings of the Louisiana appellate courts. They are not liable to appellees for the services rendered, although they stood to benefit from those services had the S Unit well been completed as a commercial producer. Appellant, on the other hand, is exposed to in rem liability for the payment of the entire cost of drilling the unit well simply because it happened to be located on the Wunsch lease. Such a result is made even more inequitable in light of the fact that appellant had no input into the selection of the well location; that decision was made by the commissioner upon the recommendation of the unit operator, Martin.

The last predicate question, whether the seizure of property from the target classification is necessary to acheive the purpose of the statute, must also be negatively answered. The Louisiana Oil Well Lien Statute was not drafted to insure payment of materialmen and laborers in every case. If such were the intent, the statutory lien would attach to the *property* on which the well was drilled, not just a mineral lease or production or equipment around the well. Obviously, the legislature did not choose to authorize such a drastic and unjustified taking of property. Neither did the Louisiana legislature intend the Louisiana Well Lien Statute to supersede the Louisiana Conservation Act and allow a claimant, like appellees, to claim the benefits of unitization but disregard the effects of unitization.

The balance struck by the Louisiana legislature in the Louisiana Oil Well Lien Statute was to protect laborers and materialmen by giving them a lien on the lease, production from the well, if any, and equipment with which they were associated or to which their work is connected, but not on production or proceeds of production from *other* leases in *other* units to which a working interest owner in the *other* unit, like appellant, is entitled to share.

A lien on production from wells o*ff the Wunsch lease and outside the S Unit* in which the appellees had no association bears no rational relationship to the purpose of the legislature in enacting the statute. That purpose can be fulfilled without subjecting to seizure

appellant's property (the production or proceeds inuring to it as a working interest owner in the F and H Units) having no connection whatsoever to the debt incurred.

Alternatively, when economic regulation [15] is challenged as violating the Equal Protection Clause, this Court has also used the "rational relation" test, the determinative factor of which is whether the classification is rationally related to the avowed purpose of the legislation. A resolution of this question requires a consideration of (a) whether the challenged legislation has a legitimate purpose, and (b) whether it was reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose. *Western & Southern Life Insurance Company v. State Board of Equalization of California*, 451 U.S. 648, 668, 101 S.Ct. 2070, 2083, 68 L.Ed.2d 514 (1981).

Equal protection requires that a statutory classification, such as lien claims against leases of working interest owners, bear a rational relationship to the legislature's objective in enacting the statute. *R. J. D'Hemecourt Petroleum, Inc. v. McNamara*, 444 So.2d 600 (La. 1983), U.S. cert. denied, 469 U.S. 820, 105 S.Ct. 92, 83 L.Ed.2d 39 (1984). Thus, the classification, in order to be valid, must carry out the legislative intent in defining the classification. *Rudolph v. Massachusetts Bay Insurance Co.*, 472 So.2d 901 (La. 1985).

The protection of oil field laborers and materialmen represents a legitimate legislative purpose and thus satisfies the first of the two predicate questions. The Louisiana Oil Well Lien Statute does not, however, satisfy the second predicate question. It does not fairly and equally promote payment of claimants for the drilling of a unit well where only the lease upon which the well is located in the unit bears the entire burden. Unitization is intended to cause mineral owners to share some of the obligations such as the drilling of the unit well. It is patently unreasonable for lawmakers to believe that liening and seizing production from *other leases* in *different units* would promote the purpose of the statute, which is to protect those who furnish services and

---

[15] The Louisiana First Circuit Court of Appeal recognized that the Louisiana Oil Well Lien Statute is purely economic and that it does not involve a fundamental federal right nor affect a suspect class. *LOR, Inc. v. Martin Exploration Co.*, 489 So.2d 1326 (La. App. 1st Cir. 1986).

materials to a well by giving them a lien on that well or production therefrom, but not to production from wells to which they supplied no materials or services. Thus, the classification created by the statute is not rationally related to achievement of a legitimate state purpose and violates the Equal Protection Clause.

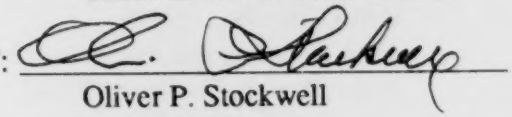
If the interpretation of the statute by the Louisiana appellate courts is upheld, appellant will have no other choice but to pay the debt (attributable to the drilling of the R. H. Wunsch No. 1 Well for Marin in the S Unit) out of production or proceeds of production attributable to appellant's interest from the F and H Units when appellant had no input into the selection of Wunsch lease acreage in the S Unit as the drill site for the R. H. Wunsch No. 1 Well. Surely, the purpose of the statute, as recognized in *Sargent vs. Freeman, supra,* did not contemplate such a result. The statute's intended purpose can never be fulfilled unless the commissioner's units are recognized as creating consistent obligations to lien claimants, like appellee, among the mineral owners in each unit.

CONCLUSION

As applied to appelant, under the undisputed facts of this case, the decisions of the Louisiana appellate courts constitute a taking of appellant's property without compensation in violation of the Taking Clause and deny appellant equal protection of the laws. The Louisiana Oil Well Len statute should be declared unconstitutional as applied in this case.

Repectfully submitted,

STOCKWELL, SIEVERT, VICCELLIO,
CLEMENTS & SHADDOCK

BY: 

Oliver P. Stockwell
Emmett C. Sole
H. Alan McCall
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491

COUNSEL FOR APPELLANT,
CHEVRON U.S.A. INC.

CERTIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF THE UNITED STATES

I, Oliver P. Stockwell, one of the counsel of record for Chevron U.S.A. Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 23 day of December, 1986, I served three copies of the foregoing jurisdictional statement on each of the several parties thereto, as follows:

On the Honorable William J. Guste, Jr., Attorney General of the State of Louisiana, Department of Justice, 234 Loyola Avenue, New Orleans, Louisiana 70112.

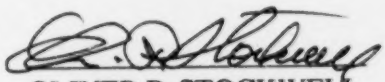
On LOR, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., Guillory Tank Truck Services, Inc., F.F.K. Gas & Oil Properties, et al, and Martin Exploration Co. in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

Mr. Edward D. Wegmann
Jones, Walker, Waechter, Poitevent
Carrere & Denegre
Attorney for LOR, Inc., et al
Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana 70170

Mr. John Dale Powers
Attorney for F.F.K. Gas & Oil Properties, et al
Post Office Box 15948
4156 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70895

Ms. Jan Marie Hayden
Brodtmann, Heller, Feldman, Steinberg & Berins
Attorney for Martin Exploration Co.
624 Whitney Bank Building
New Orleans, Louisiana 70130

It is further certified that all parties required to be served have been served, and that the list of the counsel for such parties is as set forth above.



OLIVER P. STOCKWELL
Stockwell, Sievert, Viccellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70605

APPENDIX A

Denial of Writ Application by Louisiana Supreme Court.
493 So. 2d. 1217

LOR, INC.
VERSUS
MARTIN EXPLORATION COMPANY, CHEVRON U.S.A. INC., et al
C/W
NEWPARK PIPE & SUPPLY, INC.
VERSUS
MARTIN EXPLORATION COMPANY, CHEVRON U.S.A. INC., et al
C/W
NEWPARK WASTE TREATMENT SYSTEMS, INC.
VERSUS
MARTIN EXPLORATION COMPANY, CHEVRON U.S.A. INC., et al
C/W
NEWPARK FLUID SERVICES, INC.

VS. NO. 86-C - 1259

MARTIN EXPLORATION COMPANY, CHEVRON U.S.A. INC., et al
C/W
GUILLORY TANK TRUCK SERVICES, INC.
VERSUS
MARTIN EXPLORATION COMPANY, CHEVRON U.S.A. INC., et al

IN RE: Chevron U.S.A. Inc.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number CA 85 0344, CA 85 0345, CA 85 0346, CA 85 0348, CA 85 0347; Parish of Livingston 21st Judicial District Court Div. "A" Number 41,535, 41,536, 41,537, 41,538, 41,539

September 26, 1986

Denied.

JCW
JAD
PFC
WFM
HTL
LFC

DENNIS, J., would grant the writ.

Supreme Court of Louisiana
September 26, 1986

_____
Clerk of Court
For the Court

APPENDIX B

First Circuit Court of Appeal
Opinion, 489 So.2d 1326

LOR, INC., et. al v. Chevron U.S.A. Inc.

Nos. CA 85-0344 to CA 85-0348

Before EDWARDS, LANIER and JOHN S. COVINGTON, JJ.

LANIER, Judge.

These are five consolidated suits by furnishers of labor, services and supplies on a dry hole oil well seeking recognition and enforcement of privileges granted by the Louisiana Oil, Gas and Water Well Lien Act, La.R.S. 9:4861. Subsequently, the furnishers filed a supplemental and amending petition alleging that other drilling and production units had been established on portions of the leased premises on which their privileges attached, that the defendants had the power to conceal and dispose of any revenues accruing to the mineral lease thereon and that said furnishers were entitled to a writ of sequestration to protect their privileges. The trial court issued a writ sequestering (1) the oil, gas and mineral lease in question; (2) all oil, gas or other minerals produced from the lease; (3) the proceeds of the sale of any oil, gas or other minerals produced from the lease; and (4) all oil, gas and other minerals produced from the well for which the labor, services and supplies were furnished. The lessee in the lease filed a motion to dissolve the writ of sequestration in its entirety or, in the alternative, to limit the sequestration order to the production and proceeds of the dry hole well. After a hearing, the trial court rendered judgement dissolving the writ of sequestration insofar as it

pertained to two forced conservation units which covered parts of the leased premises and which had producing wells. The furnishers took this suspensive appeal.[1]

FACTS

The basic facts in this case are set forth in *JHJ Limited 1 v. Chevron U.S.A., Inc.*, 617 F.Supp. 729, 731 (M.D.La. 1985), as follows:

> Chevron is the lessee in an oil, gas and mineral lease dated November 10, 1973, referred to as the Wunsch lease, covering some 127 acres of land situated in Livingston Parish.
>
> By an order dated October 15, 1981, the Commissioner of Conservation created a unit (the S Unit) which included about 89 acres of Chevron's Wunsch lease. The Commissioner ordered that each tract included in the unit was to share in production from the unit well in proportion to the surface area each tract bears to the entire surface area of the unit. The unit was created for the purpose of insuring orderly mineral development, to prevent waste and to avoid the drilling of unnecessary wells.

---

1. The furnishers also applied to this court for a supervisory writ which was denied with the following rationale::

> The judgments granting partial dissolutions of the writs of sequestration may cause irreparable injury to realtors since the judgment released from sequestration the most valuable assets previously sequestered. Therefore, we find no distinction between the instant matter and those cases in which writs of attachment and/or sequestration were wholly dissolved and such judgments were entertained on appeal. The judgment herein is an interlocutory order which may cause irreparable injury. See LSA-C.C.P. Art. 2083; Pittman v. Lilly, 197 La. 233, 1 So. 2d 88 (1941); Big "A: Sand & Gravel Co. v. Bay Sand & Gravel, 262 So.2d 66 (LA.App. 1st Cir.), writ denied 262 La. 467, 263 So.2d 727 (1972). See e.g. Goldberg v. P & R Company, 429 So.2d 554 (La.App.4th cir.), writ denied 433 So.2d 798 (La.App. 4th cir. 1980); Gretna Finance Company v. Camp, 212 So.2d 857 (La.App. 4th Cir. 1968). see also Carpenter v. Carpenter, 419 So.2d 999 (La.App. 4th Cir. 1982), Smith v. Utility & Maintenance Contractors of America, Inc., 301 So.2d 906 (La.App. 2nd Cir.1974), writ denied, 305 So.2d 1539 [539] (La. 1975). Realtors proper remedy is by appeal. Moreover, we note that realtors state in their application for writs that they have perfected a suspensive appeal from the judgments at issue.

Although Chevron received timely notice of the unit application and the hearing thereon, it chose not to participate in or oppose the proceedings.

The Commissioner's order designated Celt Oil Co., Inc. as the unit operator and Celt requested Martin Exploration Company to handle the engineering aspects of the drilling of the unit well.

The Commissioner chose Chevron's Wunsch lease as the surface location for The S Unit well. Again, Chevron had notice of this hearing but chose not to attend or to participate.

Chevron agreed to let Martin use its Wunsch lease surface rights but refused to participate in the cost of the drilling of the well. Subsequently, Martin was designated as unit operator, vice Celt.

. . . .

The well was spudded in on January 15, 1982.

. . . .

Subsequently, Chevron granted a farmout agreement to Martin covering that portion of the Wunsch lease (about 89 acres) which was included in the S Unit, effective March 1, 1982. Under the farmout agreement, Martin would earn an interest in the lease if the well drilled at its sole cost produced minerals in paying quantities.

. . . .

In June 1982, when the well had reached a depth of 19,954 feet, Martin suspended operations and no further operations have taken place since then. The well has never been completed as a commercial producer and Martin has never earned any interest in the Wunsch lease.

. . . .

Portions of the Wunsch lease have also been force pooled into two other units by orders of the Louisiana Commissioner of Conservation, the H Unit and the F Unit. Unit wells on both of those units have been successfully completed and Chevron's Wunsch lease has a working interest in all production from each of those wells. Neither well is physically located on the Wunsch lease and Chevron's participation in the production arises solely from the force pooling orders of the Commissioner.

The furnishers herein and the amounts of their claims are as follows:

1. Newpark Fluid Services, Inc.	$1,135,423.07
2. Guillory Tank Truck Services Inc.	7,823.40
3. Newpark Waste Treatment Systems, Inc.	30,062.75
4. Newpark Pipe and Supply, Inc.	473,991.02
5. LOR, Inc.	18,675.40
	$1,665,975.64

All of the labor, services and supplies provided by these furnishers went into the drilling of the Wunsch #1 well in the S Unit. None of the labor, services and supplies were furnished for the unit wells in the F and H Units.[2]

EXTENT OF LOUISIANA OIL WELL PRIVILEGE

At the time[3] the Wunsch #1 well was drilled on the Wunsch lease, La.R.S. 9:4861 provided as follows:

> *Any person who performs any labor or service in drilling* or in connection with drilling *any well* or wells *in search of oil*, gas or water, or who performs any labor or service in the operation or in connection with the operation of any oil, gas or water well or wells, has a privilege on all oil or gas produced from the well or wells, and the proceeds thereof inuring to the working interest therein, and *on the oil, gas or water well or wells and the lease whereon the same are located*, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached *or located on the lease*, for the amount due for labor or service, in principal and interest, and for the cost of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attor-

2. JHJ Limited I provide Martin with oil and gas drilling equipment, supplies and services in connection with the drilling of the well and conducted the drilling operations in the S Unit.

3. La. R.S. 9:4861 was amended by Act 949 of 1984.

ney to enforce collection. Any person who does any trucking, towing, or barging, or who makes any repairs, or furnishes any fuel, drilling rigs, standard rigs, machinery, equipment, materials or supplies for or in connection with the drilling of any well or wells in search of oil, gas or water, or for or in connection with the operation of any oil, gas, or water well or wells, whether or not a producing well is obtained and whether or not such materials, machinery, equipment, services and supplies are incorporated in or become a part of the completed oil, gas or water well, has a privilege on all oil or gas produced from the well or wells and the proceeds thereof inuring to the working interest therein and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks and other structures thereto attached for drilling, equipment and operation of the well or lease, for the amount due for such trucking, towing, barging, repairs, fuel, drilling rigs, standard rigs, machinery, equipment, material, or supplies, in principal and interest, and for the cost of preparing and recording the privilege, as well as ten percent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection thereof. This privilege is second in rank only to the privilege granted in favor of laborers. (Emphasis added.)

We believe the excellent opinion of our learned brother in the federal district court correctly determined the extent of the Louisiana oil well privilege in *JHJ Limited I*, 617 F. Supp. at 732-733, as follows:

> The Louisiana statute, LSA-R.S. 9:4861 grants a privilege or lien to "any person who performs any labor or service" and to any person who "furnishes any fuel, drilling rigs, standard rigs, machinery, equipment, material or supplies"in connection with the drilling of a well to search for oil, gas or water, inter alia, " . . . on all oil or gas produced from the well or wells and the proceeds thereof inuring to the working interst therein, and on the oil, gas or water well or wells and the lease whereon the same are located . . " (emphasis supplied).
>
> Although no Louisiana appellate court has passed upon this precise question, this court has little difficulty in concluding that the statute means exactly what it says - a supplier of well drilling services and equipment is granted a privilege upon "the lease

whereon" the well is located. The well drilled by JHJ is located upon the Wunsch lease. Accordingly, JHJ is entitled to a privelege upon the Wunsch lease.

Chevron's argument to the contrary presents a convoluted, serpentine trail through the Louisiana conservation laws concluding with the proposition that, for purposes of the oil well Lien Act (but for no other purpose) the action of the Commissioner of Conservation in force pooling three different areas of the Wunsch lease with other leases had the effect of dividing the lease "for operational purposes" into three separate and independent tracts thus limiting JHJ's privilege to the area of the Wunsch lease included in the S Unit, where the well was drilled. Since the well was not completed as a producer, a privilege upon that portion of the Wunsch lease would be of little benefit to JHJ.

1. Chevron does not mention it but presumably, its argument dictates that the portion of the Wunsch tract which is not included in any unit would constitute a fourth tract.

. . . .

The orders of the Commissioner of Conservation regulating the development of the various underground pools in the vicinity of the Wunsch lease have no effect upon and are not in conflict with the private contractual undertakings between the various landowners, lessees and operators. Accordingly, the Commissioner's order has not divided the obligation of the Wunsch lease and Chevron is the first to point out that production from either the F Unit well or the H Unit well maintains Chevron's Wunsch lease in its entirety, despite the admitted fact that neither well is located upon the Wunsch land. Neither the subsurface geology nor the Commissioner's order conflicts with or serves to change the obligations of the Wunsch lease (except the obligation to drill on the land); Chevron still has a single lease covering the entire acreage and LSA-R.S. 9:4861 unambiguously grants to the supplier of labor, material and equipment, a privilege on "the lease whereon" the well is drilled. This well is located on the Wunsch lease; JHJ has a privilege on the entirety of that lease.

[1] We agree that La.R.S. 9:4861 is clear and free from ambiguity in providing that the privilege granted therein extends to "the lease whereon the same are located". Louisiana courts are obligated to give effect to such expressions of the legislative will as written. La.C.C. art. 13; La.R.S. 1:4; *Hebbler v. New Orleans Fire Department*, 310 So.2d 113 (La.1975); *Bunch v. Town of St. Francisville*, 446 So.2d 1357 (La.App. 1st Cir.1984). The trial court committed error by interpreting La.R.S. 9:4861 so as to restrict the extent of the privilege granted therein only to the S Unit.

This assignment of error has merit.

CONSTITUTIONALITY OF LA.R.S. 9:4861 AS INTERPRETED HEREIN

Chevron contents that, if La.R.S. 9:4861 is interpreted to apply the privilege to the entirety of the Wunsch lease, then it will be unconstitutionally deprived of its property (proceeds of production attributable to Wunsch lease in the F and H Units) without due process in violation of La. Const. of 1974, art. I, §§ 2, 3 and 4 and the 5th and 14th Amendments of the United States Constitution.

[2] In *JHJ Limited I* 617 F.Supp. at 733-734, the federal district court disposed of this argument with the following, which we adopt as our own:

> Chevron next argues that such a construction calls the Louisiana Oil Well Lien Act into constitutional question. Asserting that as a "carried interest" in the Wunsch well, who did not initiate the unitization proceedings, did not join in the drilling of the well, did not participate in the selection of the well site and refused to join in paying the cost of the proposed well, Chevron would be liable to the operator for only it proportionate share of the well drilling cost and only out of production; LSA-R.S. 31:177, Chevron then argues that the recognition of a privilege against the entire lease amounts to an unconstitutional taking of its property in violation of the Fourteenth Amendments.
>
> Chevron's argument is wanting. It should first be noted that Chevron incurs no personal liability to JHJ. The privilege is strictly in rem, against the property (lease) only. Second, as an abstract

proposition, if the evidence here showed that, through orders of the state, without Chevron's knowledge or consent, a well were drilled upon its lease and that the well produced no benefit to Chevron, it might have some complaint of constitutional dimension. This well, however, was not drilled over Chevron's protest or in the dead of night without its knowledge and consent. The stipulated facts show that Chevron consented to the drilling of the well on its lease; first, it granted Martin surface rights to drill the well on the lease and second, it later actually entered a farmout agreement with Martin under which it specifically consented to Martin's driling the well.[4]

---

4 In brief, Chevron contests the accuracy of the facts contained in this paragraph. However, also in brief, Chevron concedes it entered into the following stipulation of fact in the JHJ Limited I case:

> 7. After the creation of the S unit, Celt requested Martin Exploration company ("Martin") to handle the engineering aspects of drilling the unit well for the S Unit , and to coordinate the execution of the required agreements with the other working interest owners in this unit. (Exhibit "D-9")
>
> 8. To accomplish that purpose, an operator's meeting was held in Martin's offices on November 13, 1981. At that time Martin proposed, and the parties in attendance concurred, that the unit well for the S Unit should be drilled on Chevron's Wunsch lease acreage as the optimum location for the unit well. Again, even though it had received prior notice of this operator's meeting, Chevron chose not to attend or participate in it. Later, Chevron learned that its Wunsch lease had been selected as the surface location for the S unit well in a letter from Martin dated November 16, 1981, three days after the operator's meeting was held. (Exhibit "D-10")
>
> 9. In view of that decision, Chevron agreed to let Martin use its Wunsch lease surface rights in the S Unit so as to facilitate operations for the drilling, completing and producing of the R.H. Wunsch No. 1 Well. (Exhibit "D-10)
>
> 10. However, Chevron refused to participate in the cost to drill this well. It did so on the basis of its evaluation of the geology and economics pertinent to the prospect, and on the fact that Chevron believed that [sic] did not have to drill a well in the S Unit in order to maintain its rights under the Wunsch lease. The Wunsch lease does not contain a Pugh clause (Exhibit "D-1") and during this time, Amoco was conducting drilling operations on (and subsequently obtained production from) two other units in which the Wunsch lease participates.

Chevron took these actions being held to knowledge of the provisions of the Louisiana Oil Well Lien Act. The purpose of that Act is to protect those, like JHJ, who contribute labor, services and equipment to the drilling of wells from the default of those who engage them. *Standard Supply and Hardware Co. v. Humphrey Bros.*, 209 La. 979, 26 So.2d. 8 (1946). The privilege granted by that statute attaches to all property listed in the stature, regardless of ownership, *Blankenship v. Stovall,* 159 So. 477 (La.App. 2d Cir.1935), and requires no contractual relationship between the supplier and the owner of the lease. *Oil Well Supply Co. v. Independent Oil Co.,* 219 La. 936, 54 So.2d 330 (1951).

The parties differ over whether Chevron gained any benefit from the drilling of the well on its lease by Martin. While a finding of benefit to Chevron is not necessary to the drilling of the well, it can be noted that Chevron gained exactly the same benefit that any other mineral lessee gains by the drilling of a dry hole on its lease. One such benefit is fulfillment of the mineral lessee's obligation to develop the property in a reasonable and prudent manner which Louisiana courts have long been recognized, see e.g. *Carter v. Arkansas Louisiana Gas Co.,* 213 La. 1028, 36 So.2d 26 (1948),

. . . .

15. After the commencement of the drilling operations, Martin solicited Chevron for a farmout of that portion of its Wunsch lease acreage which had been included within the boundaries of the S Unit.

16. By letter dated February 9, 1982, Chevron advised Martin of the terms under which Chevron would agree to a farmout (Exhibit "D-13"), which terms, in principal, were found to be acceptable by Martin in its letter to Chevron of February 11, 1982. (Exhibit "D-14") The final agreement was consummated by the parties on April 20, 1982, but was made effective as of March 1, 1982. (Exhibit "D-15)

17. Under the terms of this farmout, Martin acquired the right to earn certain interests in the Wunsch lease insofar, and only insofar, as it was included within the S Unit. To do so, Martin had to drill, at its option, the R.H. Wunsch No. 1 Well at its sole risk, cost and expense to completion as a commercial producer. In exchange, Chevron bore no responsibility for any share of the cost to drill this well. However, if it was completed as a commercial producer, then under the terms of the farmout, Chevron was entitled to receive an overriding royalty interest, convertible to a working interest after payout, on that portion of the well's production attributable to the farmout acreage, i.e., that portion of the Wunsch lease which is included within the boudaries of the S Unit.

and which is now included in the Mineral Code, LSA-R.S. 231:122. Surely Chevron would take the position with its lessors that the drilling of the Martin well fulfilled Chevron's obligation to develop the lease.

The Louisiana Oil Well Lein Act is purely economic legistation: it involves no fundamental federal right and affects no suspect class. Thus, under both substantive due process and equal protection analysis, the federal Constitution requires only that the state statute be rationally related to a legitimate state goal. *Williamson v. Lee Optical of Oklahome,* 348 U.S. 483, 75 s.Ct. 461, 99 L.Ed. 563 (1955). The question of the wisdom or utility of such legislation is for the legislature, not the courts. *Ferguson v. Skrupa,* 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed. 2d 93 (1963). Here regulation and conservation of Louisiana's minerals is a legitimate state interest, as is the protection of persons who perform labor or furnish services in connection with the drilling of oil, gas and water wells. Granting a lien on the entire lease where the activity giving rise to the lien occurred is rationally related to these state interests and it is not for this court to say that the legislature might have more logically limited the lien as argued by Chevron. *Wilson P. Abraham Const. Co. v. Texas Industries, Inc.,* 604 F.2d 897 95th Cir.1979).

La.R.S. 9:4861 is constitutional under the constitutions of the United States and the State of Louisiana.

DECREE

For the foregoing reasons, the judgment of the trial court which dissolved the writ of sequestration insofar as it pertained to the protions of the Wunsch lease located in the F and H units is reversed, and the orginal writ of sequestration issued herein is reinstated. Pursuant to the requirement so La.C.C.P. art. 2089, the immovable property which is subject to this writ of sequestration is particularly described as follows:

All right, title and interest of CHEVRON U.S.A. INC., formerly CHEVRON OIL COMPANY (hereinafter "Chevron"), and F.F.K. Gas & Oil Properties f/k/a F.F.K. Oil Company, Ltd., and, its general partners, Wiley Fairchild, Charles D. Fairchild, Herbert D. Fairchild and Rodney Fairchild in and to: (1) that certain oil, gas &

mineral lease entered into on November 10, 1973, by and between Robert H. Wunsch, husband of Vietta Lockhart Wunsch and Chevron, recorded on November 27, 1973 in Livingston Parish in C.O.B. 184, Page 267, Entry No. 97996 . . . including all oil, gas or other minerals produced therefrom and the proceeds from any sale of oil, gas or other mineral produced from said lease; and (2) all oil, gas or ther minerals produced from that certain oil, gas or mineral well, designated as the Wunsch #1, and being located on the aforementioned lease, and the proceeds thereof unuring to the working interests therein.

Chevron is cast for the cost of this appeal

REVERSED AND RENDERED.

APPENDIX C

Appendix - Reasons for Judgment - 21st Judicial District Court, State of Louisiana

LOR, INC.	NUMBER: 41,535 21ST JUDICIAL DISTRICT COURT
VERSUS	PARISH OF LIVINGSTON
MARTIN EXPLORATION COMPANY, ET AL	STATE OF LOUISIANA

REASONS FOR JUDGMENT

After considering the Motion to Dissolve Writ of Sequestration filed by defendant, Chevron U.S.A. Inc. ("Chevron") the pleadings, testimony, evidence, and law, and reserving to Chevron the right to contest the timeliness of filing, and amount of the liens filed by plaintiffs, the Court holds:

1. The writs of sequestration issued herein are dissolved insofar as they attempt to sequester any interest of Chevron in and to that certain mineral lease dated November 19, 1973 from Robert H. Wunsch to Chevron ("Wunsch Lease"), or production or proceeds of production attributable to Wunsch Lease acreage, included in the surface acreage of the 16,700' TUSC RA SU H Unit ("H Unit"), and 16,700' TUSC RA SU F Unite ("F Unit") created by Order no. 1084 of the Louisiana Commissioner of Conservation dated March 24, 1980, for the following reasons:

a. The Wunsch Lease is included within the boundaries of three (3) units, i.e., the H Unit, the F Unit, and the 16,700' TUSC RA SU S Unit ("S Unit"), formed by the Commissioner of Conservation by Order No. 1084 -A-3, dated October 15, 1981.

b. The Wunsch Lease has never been operated on a lease basis as a unit but has only been developed through unitization.

c. Amoco was designated as the operator of the H and F Units and the unit wells in those units were commenced on February 11, 1981 and May 29, 1981, respectively.

d. On July 23, 1981, Celt Oil, Inc. ("Celt") applied to the Commissioner for a hearing relative to the creation of the S Unit. The

hearing was held before the Commissioner on September 22, 1981 at which time Celt presented evidence in support of the creation of the S Unit. Chevron did not attend or participate in this hearing. On October 15, 1981 the Commissioner issued Order No. 1084 creating the S Unit. Although Chrevron did not participate in this unitization hearing, a portion of the acreage held by it under the Wunsch Lease was included in the S Unit.

e. Chevron did not participate or attend the Operator's Meeting held at the offices of Martin Exploration Company ("Martin") successor to Celt as operator of the S Unit, on November 13, 1981, which resulted in the selection of the portion of the Wunsch Lease in the S Unit as the surface location for the unit well. The Commissioner had the power to fix the well location on the portion of the Wunsch Lease in the S Unit even if Chevron had objected. LSA-RS 30:9.

f. By letter dated December 9, 1981, Martin advised Chevron that Martin had selected the portion of the Wunsch Lease in the S Unit as the surface location for the unit well, designated the R.H. Wunsch No. 1 Well.

g. By letter dated December 9, 1981, Martin advised the Commissioner that it would be the operator of the S Unit and responsible for all costs incurred in the drilling of said unit well. The Commissioner approved Martin as operator of well.

h. The R.H.Wunsch No. 1 Well was spudded by Martin on January 15, 1982.

i. Chevron and Martin entered into a farmout agreement dated and made effective March 1, 1982, affecting only the acreage covered by the Wunsch Lease in the S Unit which farmout agreement is in the nature of an agreement to assign to Martin the portion of the Wunsch Lease in the S Unit under certain conditions. This farmout agreement did not affect the portions of the Wunsch Lease in the H and F Units where Amoco was the operator and was in the process of drilling wells in each unit. Under the terms and conditions of the farmout agreement, all of the operations for the drilling of the R.H.Wunsch No. 1 well were conducted solely by Martin at Martin's sole risk, cost, and expense. The farmout agreement did not obligate Martin to complete the R.H. Wunsch No. 1 Well, but Martin could only earn an interest in the Wunsch Lease acreage in the S Unit if the R.H.Wunsch No. 1 Well was completed as a commercial producer. The R.H.Wunsch No. 1 Well was abandoned by Martin prior

to completion as a commercial producer and Martin never earned any interest in any part of the Wunsch Lease under the terms of the farmout agreement with Chevron dated March 1, 1982.

j. Chevron does not now, nor has it ever owned any interest in the R.H. Wunsch No. 1 Well, even though it is located on a portion of the Wunsch Lease in the S Unit.

k. Plaintiff's rights, if any, under LSA-R.S. 9:4861, et seq., should be limited to the acreage of the Wunsch Lease which is included within the S Unit only. It is only that part of the Wunsch Lease included in the S Unit which stood to benefit from the drilling of the R.H. Wunsch No. 1 Well and only that part should be exposed to potential in rem liability to plaintiffs.

l. By attempting to extend any privilege under the subject statute to Wunsch Lease acreage outside the S Unit, plaintiffs are disregarding the effect of unitization and any decision supporting such a position would establish a conflict between the provisions and policies of the Louisiana Conservation Act and the Oil Well Lien Statute.

m. If the Oil Well Lien Statute is interpretted as sought by plaintiffs, it must be found unconstitutional as depriving Chevron of its property without due process of law and also as depriving Chevron of its equal protection to the laws of the United States and The State of Louisiana.

Judgment will be signed accordingly.

LIVINGSTON, LOUISIANA this 5 day of December, 1984.

_____

KENNETH J. FOGG
DISTRICT JUDGE - DIVISION "A"
21ST JUDICIAL DISTRICT COURT
PARISH OF LIVINGSTON
STATE OF LOUISIANA

APPENDIX D

Judgment of the 21st Judicial District Court, State of Louisiana

TWENTY-FIRST JUDICIAL DISTRICT COURT
PARISH OF LOUISIANA
STATE OF LOUISIANA

NO. 41,535 DIVISION "A"

LOR, INC.

versus

MARTIN EXPLORATION COMPANY, ET AL

Filed: December 7, 1984

_____
Deputy Clerk of Court

JUDGMENT

This matter comes before the Court on a Motion to Dissolve Writ of Sequestration filed by Defendant, Chevron U.S.A. Inc. After considering the pleadings, testimony, evidence, law, and for reasons assigned:

IT IS ORDERED that the writ of sequestration issued herein be and the same is dissolved insofar as it attempts to sequester any interest of Chevron U.S.A. Inc. in that certain mineral lease dated November 10, 1973 from Robert H. Wunsch, covering approximately 127 acres of land situated in Livingston Parish, Louisiana, which said mineral lease was recorded on November 27, 1973 under Entry No. 97996 and is recorded in Conveyance Book 184 at page 267 of the records of Livingston Parish, Louisiana, or production or proceeds of production attributable to said lease acreage, included in the surface acreage of the 16,700' TUSC RA SU H Unit and 16,700' TUSC RA SU F Unit, Lockhart Crossing Field, Livingston Parish, Louisiana, created by Order No. 1084 dated march 24, 1980 of the Louisiana Commissioner of Conservation, and including seizure of any funds attributable thereto.

IT IS FURTHER ORDERED that the right of Chevron U.S.A. Inc. to contest the timeliness of filing and amount of the lien filed by Plaintiff is hereby reserved to Chevron U.S.A. Inc.

IT IS FURTHER ORDERED that the right of Chevron U.S.A. Inc. to attorney's fees and damages for the wrongful issuance of the writ of sequestration served upon it is hereby reserved to Chevron U.S.A. Inc.

THUS ORDERED AND SIGNED at Livingston, Louisiana, on this 7th day of December 1984.

s/ Kenneth J. Fogg
District Judge

APPENDIX E

Consent Judgment, 21st Judicial District Court, State Of Louisiana

TWENTY FIRST JUDICIAL DISTRICT COURT
PARISH OF LIVINGSTON
STATE OF LOUISIANA

NO. 41,535 DIVISION "A"
CONSOLIDATED
LOR, INC.
versus
MARTIN EXPLORATION COMPANY, ET AL
NO. 41,536 DIVISION "C"
NEWPARK PIPE & SUPPLY, INC.
versus
MARTIN EXPLORATION COMPANY, ET AL
NO. 41,537 DIVISION "B"
NEWPARK WASTE TREATMENT SYSTEMS, INC.
versus
MARTIN EXPLORATION COMPANY, ET AL
NO. 41,538 DIVISION "D"
NEWPARK FLUID SERVICES. INC.
versus
MARTIN EXPLORATION COMPANY, ET AL
NO. 41,539 DIVISION "A"
GUILLORY TANK TRUCK SERVICES, INC.
versus
MARTIN EXPLORATION COMPANY, ET AL

FILED February 7, 1984 Deputy clerk Pam Baine

JUDGMENT

This matter comes before the court on Motions to Strike, filed by Chevron U.S.A. Inc. in the above consolidated cases, the demands that Chevron U.S.A. Inc. be held personally liable, individually or in solido

with others, to Plaintiffs, for the reason that the demands have no basis by conventional obligation or by law. After considering the pleadings, and consent of counsel for Plaintiff:

IT IS ORDERED, ADJUDGED, AND DECREED that the rule issued herein by made absolute and that the demands of Plaintiffs that Chevron U.S.A. Inc. is personally liable to Plaintiffs, individually and in solido with others, are hereby striken from the Petitions of the Plaintiffs in the above captioned and consolidated cases as having no basis by conventional obligation or by law.

JUDGMENT READ, RENDERED AND SIGNED in Chambers, at Livingston, Louisiana, on the 7th day of February, 1984.

s/Kenneth J. Fogg
District Judge

CONSENTED TO:

JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE

EDWARD D. WEGMANN
Eighteenth Floor
225 Baronne Street
New Orleans, Louisiana 70112
Telephone: 504-581-8641
Attorneys for Plaintiffs

APPENDIX F

SUPREME COURT OF LOUISIANA

NO. 86-C-1259

LOR, INC., ET AL
Plaintiffs - Respondents,

VERSUS
CHEVRON U.S.A. INC., ET AL
Defendant - Relator

NOTICE OF APPEAL
TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Chevron U.S.A., INC., Applicant/Appellant, appeals to the Supreme Court of the United States from the denial of its application for writ of certiorari and /or review on September 26, 1986.

This appeal is taken pursuant to 28 U.S.C.§ 1257 (2).

STOCKWELL, SIEVERT, VICCELLIO,
CLEMENTS & SHADDOCK

SUPREME COURT
OF LOUISIANA
DEC 16 12 57 PM '86
CLERK OF COURT

BY: OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL
Post Office Box 2900
Lake Charles, LA 70602
(318) 436-9491

Attorneys for Chevron U.S.A. Inc.

December 16, 1986

CERIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF THE UNITED STATES

I, OLIVER P. STOCKWELL, one of the counsel of record for Chevron U.S.A. Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 16th day of December, 1986, I served a copy of a Notice of Appeal to the United States Supreme Court on each of the several parties thereto, as follows:

On the Honorable William J. Guste, Jr., Attorney General of the State of Louisiana, Department of Justice, 234 Loyola Avenue, New Orleans, Louisiana 70112

On LOR, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc., F.F.K. Gas & Oil Properties, et al, and Martin Exploration Co., in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

Mr. Edward D. Wegmann
Jones, Walker, Waechter, Poitevent
Carrere & Denegre
Attorneys for LOR, INC., et al
Place St. Charles
201 St. Charles Ave
New Orleans, Louisiana 70170

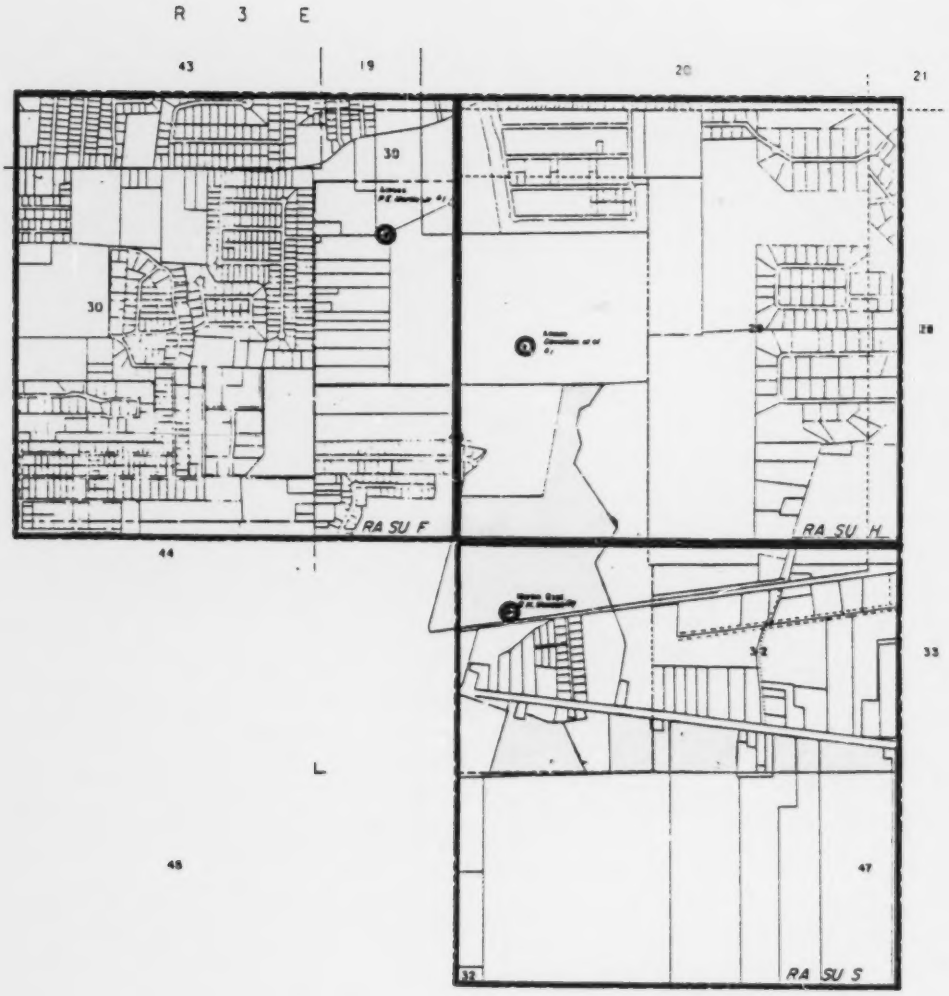
Mr. John Dale Powers
Attorney for F.F.K. Gas & Oil Properties, et al
Post Office Box 15948
4156 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70895

Ms. Jan Marie Hayden
Brodtmann, Heller, Feldman, Steinberg & Berins
Attorney for Martin Exploration Co.
624 Whitney Bank Building
New Orleans, Louisiana 70130

It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

OLIVER P. STOCKWELL
Stockwell, Cievert, Viccellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70605

APPENDIX G


R 3 E
43
19
20
21
30
30
28
RA SU F
RA SU H
44
32
33
45
47
32
RA SU S
Chevron U.S.A. Inc.
LOCKHART CROSSING
LAND PLAT
(UNITS RA SU F, H & S)

Supreme Court, U.S.
FILED
FEB 18 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1198

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSUS

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

EDWARD D. WEGMANN
THOMAS A. CASEY, JR.
JONES, WALKER, WAECHTER,
POITEVENT, CARRERE &
DENEGRE
201 St. Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-8000
Counsel for Appellees,
Lor, Inc.,
Newpark Pipe & Supply, Inc.,
Newpark Waste Treatment Systems,
Inc.,
Newpark Fluid Services, Inc., and
Guillory Tank Truck Services, Inc.

February 16, 1987

28 pp

QUESTION PRESENTED

The question presented by this Motion to Dismiss for Want of a Substantial Federal Question is whether the questions presented by appellant, Chevron U.S.A. Inc., in its Jurisdictional Statement are so unsubstantial, as recognized by the Louisiana appellate courts, so as not to warrant further review by and argument before this Court. In particular, the unsubstantial questions raised by appellant are:

1. Whether the privilege asserted pursuant to LSA-R.S. 9:4861 (hereinafter the "Louisiana Oil Well Lien Statute") by appellees on appellant's mineral lease, including those portions of the lease beyond the unit on which appellees' work was performed, constitutes a "taking" of property without compensation in violation of the due process requirements of the Fourteenth Amendment to the Constitution of the United States.
2. Whether the privilege asserted pursuant to the Louisiana Oil Well Lien Statute by appellees on appellant's mineral lease, including those portions of the lease beyond the unit on which appellees' work was performed, denies appellant equal protection of the laws in conflict with the Fourteenth Amendment to the Constitution of the United States.

PARTIES TO PROCEEDINGS BELOW

Original parties before the Supreme Court of the State of Louisiana were:

1. Appellant — Chevron U.S.A. Inc.; parent company — Chevron Corp; affiliated companies — A.K. Chemie G.m.b.H.; A/S Hydrantanlaegget Koebenhavns Lufthavn, Kastrup; Aircaft Fuel Supply B.V.; AMAX Inc.; Arabian American Oil Company; Aramco Overseas Company; Aramco Services Company; Associated Octel Company (Plant) Limited; Associated Octel Company Limited, The; Atlas Supply Company; Burgan Pension Fund Trustees Limited; Canaport Limited; Cansulex Limited; Canyon Reef Carriers, Inc.; Cetus Corporation; Compania De Niquel Colombiano, S.A.; Coromondel Fertilisers Limited; DE BA — S.p.A. — Industria Petrolifera; Felix Oil Company; Freeport Trading Company Limited; Glen Park Gas Pipeline Company Limited; Hydrant Servicing Company Limited; International Gas Transportation Company Limited; Iranian Oil Participants Limited; Iranian Oil Services (Holdings) Limited; Irving Oil Company, Limited; Irving Oil Limited; Irving Oil Terminals Ltd.; Karonite Chemical Company, Limited; Laurel Pipe Line Company; Long Beach Oil Development Company; Maasvlakte Olie Terminal N.V.; Mainline Pipelines Limited; Marine Agents and Brokers Limited; MARS — Milan Airport Refuelling Services S.p.A; Mittelland Refinery Limited; N.V. Rotterdam-Rijn Pijpleiding Maatschappij; Nippon Petroleum Detergent Company, Limited; Octel Societe Anonyme; Oil Insurance Limited; Oil Investment Corporation Ltd.; Pembroke Capital Company Inc.; Petrosynthese S.A.; Plantation Pipe Line Company; Raffineria de Roma S.p.A.; Rimbey Pipe Line Co. Ltd.; River Nile Petroleum Company Limited; Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.; Rotterdam-Antwerpen Pipjpleiding (Belgie)

N.V.: SARACO S.A.; Saudi Cable Company; SERAM — S.p.A.; Societa per Azione Raffineria Padana Olii Minerali SARPOM; Societe d'Etude et d'Exploitation de la Raffinerie du Tchad; Standard Pacific Gas Line Incorporated; Sultran Ltd.; TAR — Tankanlage Ruemlang A.G.; Trans-Arabian Pipe Line Company; UBAG — Unterflurbetankungsanlage Flughafen Zurich; UNC Incorporated; United Kingdom Oil Pipelines Limited; West Texas Gulf Pipe Line Company.

2. Appellees — Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc.

3. Other Parties — Other parties to the proceeding in the court whose judgment is sought to be reviewed, i.e, the courts of the State of Louisiana, are the following: Martin Exploration Company, F.F.K. Gas & Oil Properties f/k/a F.F.K. Oil Company, and W.R. Fairchild Construction Company, Ltd., and its General Partners, Wiley Fairchild, Charles D. Fairchild, Herbert D. Fairchild and Rodney Fairchild.

TABLE OF CONTENTS

	PAGE
Question Presented	ii
Parties to Proceedings Below	iii
Table of Contents	v
Table of Authorities	vi
State Statute Involved	1
Statement	2
1. Statement of Facts and History of Proceedings	2
2. Louisiana Conservation Laws	4
Argument	5
1. Appellant's Position That the Louisiana Oil Well Lien Statute Has Deprived Appellant of Substantive Due Process Is Unsubstantial	7
a. Appellant's Due Process Argument Is Premised on Improper Facts	7
b. Appellant's Due Process Argument Is Premised on Improper Law	9
i. Did the Legislature Rationally Exercise its Authority?	10
ii. Did the Application of the Statute Constitute a "Taking"?	11
2. Appellant's Position That the Louisiana Oil Well Lien Statute Has Deprived Appellant of Equal Protection of the Laws Is Unsubstantial	14
Conclusion	19
Certificate of Service	20

TABLE OF AUTHORITIES

PAGE

CASES

Arkansas Louisiana Gas Co. v. *Southwest National Production Co.*, 221 La. 608, 60 So.2d 9 (1952) 5

Hawaii Housing Authority v. *Midkiff*, 467 U.S. 229, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984) 10

JHJ Limited I v. *Chevron U.S.A., Inc.*, 617 F. Supp. 729 (M.D. La. 1985), *aff'd*, 806 F.2d 82 (5th Cir. 1986) 6, 7, 8, 15

Lor, Inc. v. *Martin Exploration Co.*, 489 So.2d 1326 (La. App. 1st Cir. 1986), *cert. denied*, 493 So.2d 1217 (1986) 4, 8, 11, 15

Loretto v. *Teleprompter Manhattan CATV Corp.*, 450 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) 12

Lynch v. *Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) 15

McGowan v. *Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961) 14

Nebbia v. *New York*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934) 9

Ogden Oil Co., Inc. v. *Prudential Oil Corp.*, 490 So.2d 725 (La. App. 3d Cir. 1986) 9

Penn Central Transportation Co. v. *City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). 13

Pennsylvania Coal Co. v. *Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922) 14

Ruckelshaus v. *Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984) 12, 13

Sargent v. *Freeman*, 204 La. 997, 16 So.2d 737 (1943) 9

West Coast Hotel v. *Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937) 9

Western and Southern Life Insurance Co. v. *State Board of Equalization*, 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 (1981) 14, 16, 17

Williamson v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955) 9, 15

PAGE

Wilson P. Abraham Construction Corp. v. *Texas Industries, Inc.*, 604 F.2d 897 (5th Cir. 1979) 15

STATUTE

LSA-R.S. 9:4861, *et seq.* 1, 2

MISCELLANEOUS

L. Tribe, American Constitutional Law § 16-3 (1978) . 16, 17

No. 86-1198

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., and
GUILLORY TANK TRUCK SERVICES, INC.

VERSUS

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION

The appellees move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Louisiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further review or argument.

STATE STATUTE INVOLVED

This appeal raises the question of the constitutional validity of a portion of the Louisiana Oil Well Lien Statute, LSA-R.S. 9:4861, *et seq.* The specific portion of the statute challenged by appellant is as follows:

> Any person who performs any labor or service in drilling or in connection with the drilling of any well . . . in search of oil, gas or water . . . has a *privilege on all* oil or gas

> produced from the well . . . and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells *and the lease whereon the same are located* . . . . Any person who . . . furnishes any . . . equipment, material or supplies for or in connection with the drilling of any well in search of oil, gas or water . . . has a *privilege on all* oil or gas produced from the well or wells *and* the proceeds thereof inuring to the working interest therein and on the oil, gas or water well or wells *and the lease whereon the same are located* . . . (Emphasis added.)

LSA-R.S. 9:4861. In simple terms, insofar as this appeal is concerned, the lien statute provides a security device for oil field laborers and materialmen by allowing them a privilege or lien on the lease for which the labor or materials were supplied.

STATEMENT

1. STATEMENT OF FACTS AND HISTORY OF PROCEEDINGS

Appellees, Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc., each filed suit against Chevron U.S.A. Inc. ("Chevron"), Martin Exploration Company ("Martin"), and F.F.K. Gas and Oil Properties, etc. ("FFK") on June 22, 1983 in the Twenty First Judicial District Court for the Parish of Livingston, State of Louisiana. The five matters were eventually consolidated for trial. The actions sought enforcement of appellees' liens pursuant to the Louisiana Oil Well Lien Statute, LSA-R.S. 9:4861.

The claims arose out of the failure of Martin to pay for almost One Million Seven Hundred Thousand And 00/100 ($1,700,000.00) Dollars worth of supplies, equipment, and labor which appellees furnished in connection with the drilling, reworking, or operating of the Wunsch No. 1 Well (the "Wunsch Well").

The Wunsch Well is located on a mineral leasehold granted to Chevron by Robert H. Wunsch pursuant to a mineral lease dated November 10, 1973, covering approximately 127.32 acres of land in the Lockhart Crossing Field in Livingston Parish, Louisiana (the "Wunsch Lease"). That portion of the Lockhart Crossing Field containing the 16,700′ Tuscaloosa Sand Reservoir A was divided into numerous drilling and production units pursuant to orders of the Louisiana Office of Conservation. A portion of the Wunsch Lease is included within the 16,700′ TUSCA RA SU S Unit (the "S Unit"), as designated by the Louisiana Commissioner of Conservation. The remaining portions of the Wunsch Lease are included within separate drilling and production units, the 16,700′ TUSC RA SU H Unit (the "H Unit") and the 16,700′ TUSCA RA SU F Unit (the "F Unit") (collectively, the S Unit, H Unit and F Unit are referred to hereinafter as the "Units"). Because a portion of Chevron's Wunsch lease is within the boundaries of the F Unit and the H Unit, Chevron's Wunsch lease has a working interest in all production from each of those Units.

As appellant's Jurisdictional Statement conveniently omits, Chevron received notice of the unitization application hearing before the Commissioner of Conservation, but Chevron stated no opposition to the application and did not express concern in any way. Once again, when the Commissioner selected the Wunsch lease as the surface location for the S Unit well, Chevron had notice, did not object, and failed to participate.

Subsequently, without any order from a regulatory agency, Chevron and Martin voluntarily entered into a farmout agreement (the "Farmout Agreement") pursuant to which Chevron offered Martin the right to earn certain interests in the Wunsch lease, insofar as said lease was included within the S Unit, in consideration for Martin drilling a productive well on the farmout acreage. Martin contracted with appellees and other suppliers for the labor, equipment, and supplies necessary for the

drilling of the Wunsch Well prior to completion as a commercial producer.

When it became apparent that Martin would not be able to meet its obligations, appellees timely filed and recorded liens and privileges pursuant to the Louisiana Oil Well Lien Statute against Chevron's Wunsch lease, as well as on all oil, gas, and other products produced from the lease and the Wunsch Well, and on all equipment attached to or located on the well.

Although the trial court failed to recognize appellees' liens against the entire Wunsch lease, the trial court was reversed in a unanimous decision by the First Circuit Court of Appeal for the State of Louisiana. 489 So.2d 1326 (1986). In particular, the appellate court solidly rejected the constitutional concerns raised by appellant before this Court. Appellant then requested that the Louisiana Supreme Court review the Court of Appeal's decision, which request was rejected. 493 So.2d 1217 (1986).

2. LOUISIANA CONSERVATION LAWS

Throughout the appellant's Jurisdictional Statement, an attempt is made to re-litigate and re-argue the concepts that somehow "Appellees seek the benefit of unitization but deny the effect" and the "Louisiana Oil Well Lien Statute conflicts with the Louisiana Conservation Act, LSA-R.S. 30:2, *et seq.*", although both of these concepts were soundly rejected by the Louisiana Courts. Appellant's Jurisdictional Statement at 9.

For example, appellants state: "Unitization orders of the Louisiana Commissioner of Conservation divide oil, gas and mineral leases for operational purposes." Appellant's Jurisdictional Statement at 7. Appellant made no attempt to define "operational purposes", but if appellant's statement is designed to imply that unitization can somehow limit or restrict a laborer's or materialman's lien on a mineral lease, then that is precisely the statutory interpretation rejected by the lower courts in this matter. *See, e.g.*, 489 So.2d at 1330. In order that

the record is clear, unitization is intended merely as a conservation measure, designed to provide for an orderly depletion of Louisiana's natural resources. *Arkansas Louisiana Gas Co.* v. *Southwest National Production Co.*, 221 La. 608, 60 So.2d 9 (1952). Unitization does not, and has never been interpreted to, effect economic provisions such as the Louisiana Oil Well Lien Statute.

ARGUMENT

As is evident from a reading of the Jurisdictional Statement proposed by appellant, the due process and equal protection arguments expressed therein are merely desperate attempts to prolong this already protracted litigation.[1] The arguments are totally unsubstantial and, as a result, this appeal should be dismissed.

Before turning to the due process and the equal protection arguments raised by appellant, appellee directs the Court's attention to a preliminary matter which was apparently of great importance to appellant at the time the Jurisdictional Statement was filed. Appellant noted that it filed this appeal because an identical case (i.e., involving the same defendant, the same mineral lessor, the same unit well, the same unit operator, and the same legal issues — only the plaintiff-supplier was different) was pending and appellant feared conflicting results. As appellant explained:

> A related case, involving appellant and the same constitutional questions, is pending for decision in the United States Fifth Circuit Court of Appeals. Docket No. 863043. It has

---

[1] After the Louisiana Supreme Court denied Chevron's writ of certiorari regarding the decision by the Court of Appeal, Chevron filed with the court a motion to stay proceedings in the trial court pending appeal to the United States Supreme Court. The Louisiana Supreme Court denied the motion stating: "Denied. No apparent Federal Question . . . . " *Lor, Inc.* v. *Chevron U.S.A. Inc.*, No. 86-C-1259 (La. Dec. 11, 1986).

> already been argued and an opinion is anticipated.Only the plaintiff is different; the defendants, including appellant, are the same. That case is on appeal from the U.S. District Court for the Middle District of Louisiana. *JHJ Limited I* v. *Chevron U.S.A., Inc.*, 617 F.Supp. 729 (M.D. La. 1985).
>
> The instant appeal is being taken because it is the only way appellant can be protected. Without this appeal, the decision of the Supreme Court of the State of Louisiana on appellant's constitutional challenge to the Louisiana Oil Well Lien Statute, as applied to appellant in this case, will be final. If the Fifth Circuit Court of Appeals was then to render judgment in favor of appellant in *JHJ Limited I* v. *Chevron U.S.A., Inc., supra,* reversing the district court on the constitutional questions raised in these cases, appellant would have then attained the relief if seeks in the federal court system, but been denied that same relief by the Louisiana state courts. There would then be two opposite, contradictory opinions on the identical constitutional questions regarding the application of the Louisiana Oil Well Lien Statute to appellant. It is therefore imperative that appellant take this appeal and that this Court consider the constitutional questions raised.

Appellant's Jurisdictional Statement at 2. Appellant's concern that it be protected from "contradictory opinions" is now no longer a problem, because the United States Fifth Circuit has recently issued a decision affirming the trial court, thus upholding the materialman's right to assert the privilege in the exact context before this Court. *JHJ Limited I* v. *Chevron U.S.A. Inc.*, 806 F.2d 82 (1986). Therefore, the highest Louisiana State Court in the present matter and the highest Louisiana Federal Court in the *JHJ* matter have now both rejected Chevron's arguments.

With regard to the substantive due process and equal protection theories put forth by appellant, each will be examined in turn.

1. APPELLANT'S POSITION THAT THE LOUISIANA OIL WELL LIEN STATUTE HAS DEPRIVED APPELLANT OF SUBSTANTIVE DUE PROCESS IS UNSUBSTANTIAL.

Appellant's contention that the operation of the Louisiana Oil Well Lien Statute in this instance effectively constituted a "taking without compensation" in violation of the due process provisions of the Fourteenth Amendment is simply unsubstantiated by the applicable law and facts.

a. Appellant's Due Process Argument Is Premised on Improper Facts.

Appellant's Jurisdictional Statement is based completly on an attempt at this late stage of the litigation to rewrite the facts as found by the Louisiana courts. Indeed, the Jurisdictional Statement cavalierly undertakes a broad review of due process jurisprudence with the implication that the present facts involve a classic "taking" of private assets by government seizure. Of course, nothing could be further from reality. As the lower court determined in its findings of fact, Chevron not only *consented* to commercial transactions with private parties, of which transactions Chevron knew the Louisiana Oil Well Lien Statute was a part, but Chevron also unquestionably gained a *benefit* from the drilling of the Wunsch Well.

With regard to the issue of consent, the lower court, by adopting as its own the following language from *JHJ Limited 1, supra*, noted in no uncertain terms that Chevron voluntarily entered into each step of the Wunsch lease transactions with knowledge of the consequences of the Louisiana Oil Well Lien Statute, which had been enacted long before the lease transactions were considered:

> Second, as an abstract proposition, if the evidence here showed that, through orders of the state, without Chevron's knowledge or consent, a well were drilled upon its lease and that the well produced no benefit to Chevron, it might have

> some complaint of constitutional dimension. This well, however, was not drilled over Chevron's protest or in the dead of night without its knowledge and consent. The stipulated facts show that Chevron consented to the drilling of the well on its lease; first, it granted Martin surface rights to drill the well on the lease and second, it later actually entered a farmout agreeement with Martin under which it specifically consented to Martin's drilling the well.
>
> Chevron took these actions being held to knowledge of the provisions of the Louisiana Oil Well Lien Act. The purpose of that Act is to protect those, like JHJ, who contribute labor, services and equipment to the drilling of wells from the default of those who engage them. *Standard Supply and Hardware Co.* v. *Humphrey Bros.*, 209 La. 979, 26 So.2d 8 (1946). The privilege granted by that statute attaches to all property listed in the statute, regardless of ownership, *Blankenship* v. *Stovall*, 159 So. 477 (La. App. 2d Cir. 1935), and requires no contractual relationship between the supplier and the owner of the lease. *Oil Well Supply Co.* v. *Independent Oil Co.*, 219 La. 936, 54 So.2d 330 (1951).

489 So.2d at 13312. Those are the fact findings of the Louisiana court.

Although the lower court explained that a finding of a benefit to Chevron was not essential to a conclusion that the Louisiana Oil Well Lien Statute is constitutional, out of an abundance of caution, the benefit Chevron derived is briefly described here. To begin with, "Chevron gained exactly the same benefit that any other mineral lessee gains by the drilling of a dry hole on its lease", including "fulfillment of the mineral lessee's obligation to develop the property in a reasonable and prudent manner." 489 So.2d at 1332. Also, if oil and gas in producing quantities had been found at the site, Chevron would have profited handsomely; the fact that the well did not produce in paying quantities is simply a business risk which Chevron took when it purchased the lease. Furthermore, because the farmout agreement has now

terminated, Chevron is free to use the valuable geological information gained from the drilling of the Wunsch Well and proceed with exploration, production and development of the surrounding property, including the Wunsch Well.

b. Appellant's Due Process Argument Is Premised On Improper Law.

Against the foregoing facts, the law is even more clearly weighted in appellee's favor.

A now elementary principle of constitutuional law is that "[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955). *See also Nebbia* v. *New York*, 291 U.S. 502, 54 S.C. 505, 78 L.Ed. 940 (1934); *West Coast Hotel* v. *Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937). The question of the wisdom of such enactments is quite naturally for the legislature and not the judiciary. *Williamson*, 348 U.S. at 488, 75 S.Ct. at 464-5. For this very reason, the Louisiana Oil Well Lien Statute has survived other similar constitutional challenges. *See, e.g., Sargent* v. *Freeman*, 204 La. 997, 16 So.2d 737 (1943); *Ogden Oil Co., Inc.* v. *Prudential Oil Corp.*, 490 So.2d 725 (La. App. 3d Cir. 1986).

Turning to the two-step test proposed by appellant for application in due process "taking without compensation" analysis, Chevron has no constitutional objection to the Louisiana Oil Well Lien Statute because the statute is a rational exercise of legislative authority and there has been no "taking without compensation."

i. Did the Legislature Rationally Exercise Its Authority?

The standard for determining whether the Louisiana Legislature has "rationally exercised" its authority by its protection of oilfield laborers and materialmen with the Louisiana Oil Well Lien Statute is *not* "whether *in fact* the provision will accomplish its objective", but rather whether the "Legislature *rationally could have believed* that the [A]ct would promote its objective." *Hawaii Housing Authority* v. *Midkiff*, 467 U.S. 229, 242, 104 S.Ct. 2321, 2330, 81 L.Ed.2d 186 (1984). The *Hawaii Housing* Court further stated:

> When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings — no less than debates over the wisdom of other kinds of socioeconomic legislation — are not to be carried out in the federal courts.

467 U.S. at 242-3, 104 S.Ct. at 2230. Thus, assuming that a "taking" has occurred, appellant must show that the legislature could not have thought that the taking would achieve the purpose of the Louisiana Oil Well Lien Statute. As mentioned previously, the purpose of the statute is to protect the interest of laborers and materialmen supplying goods and services in drilling operations, thereby facilitating a smooth and orderly operation of one of Louisiana's major industries.

Appellant first argues that the statute is irrational because the provision supposedly allows a blanket seizure of production from an unrelated well, thus permitting "appellees to collect from appellant personally." Appellant's Jurisdictional Statement at 14. This is simply not accurate. The Louisiana Oil Well Lien Statute does not allow a blanket privilege, only a privilege on the lease where the well in question was drilled and on which the services were performed. The fact that a portion of the lease may be contained within a neighboring unit does not, and under no rational basis should, alter this conclusion. At the very least, appellant cannot meet its burden of showing that the legislature

had no rational basis to believe that allowing a privilege on all of the lease, and not merely the portion of the lease within the unit where the well was drilled, would better insure the payment of laborers and materialmen and better enhance drilling and exploration in Louisiana. In fact, under the circumstances of this case, as well as in innumerable other cases in which a dry hole is drilled, the laborers and materialmen will only recover if their lien and privilege applies to the entire lease. Appellant's statement that the statute makes Chevron personally liable is simply not true since the liability of Chevron is *in rem* only. *See Lor, Inc.* v. *Martin Exploration Co.*, 489 So.2d at 1331. Chevron can avoid any and all further liability by surrendering the Wunsch lease or allowing it to be sold at auction.

Appellant next argues that alternatives to the Louisiana Oil Well Lien Statute exist. Whether alternatives exist are of no relevance inasmuch as the only question is whether the method chosen by the legislature is rational and not whether a better method can be found; but, in any event, the "alternatives" listed by appellant in the Jurisdictional Statement are clearly impractical and irrational in and of themselves. Appellant's Jurisdictional Statement at 14-15. The listed alternatives include such onerous items as forcing the laborers and materialmen to obtain protective bonds or demand payment in cash. Even if alternatives were a relevant consideration, a company such as Chevron clearly has limitless options of its own, not the least of which would have been its refusal to consent to any of the commercial transactions involving the lease in question.

ii. Did the Application of the Louisiana Oil Well Lien Statute Constitute a "Taking"?

Appellant argues that its property has been "impacted" by the application of the Louisiana Oil Well Lien Statute and that the impact rises to the level of an unconstitutional taking. Quite obviously, Chevron's property has been impacted — that is the nature of any lien statute; however, the impact is merely a

product of permissible economic and commercial regulation and is not a drastic intrusion by government.

This Court in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, 102 S.Ct. 3164, 3171, 73 L.Ed.2d 868 (1982), noted two general standards to be followed in determining whether an unconstitutional taking has occurred:

> But the inquiry is not standardless. The economic impact of the regulation, especially the degree of interference with investment backed expectations, is of particular significance. "So, too, is the character of the governmental action. A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Ibid.* (citation omitted).

The first standard, economic impact and investment-backed expectations, provides no comfort to appellant here. Appellant's major argument with regard to the economic impact of the statute appears to be that Chevron should bear no liability to appellees because the funds in dispute, though arising out of the lease on which the appellees rendered services, were not *directly* produced by the services appellees provided. The problem with this argument is that Chevron knew the potential economic impact of its decision to obtain a mineral lease and consented, impliedly and otherwise, to all actions undertaken with regard to the drilling of the Wunsch Well. Although Chevron arguably made a bad economic decision, the resulting lien placed on the Wunsch lease was certainly in line with Chevron's investment-backed expectations. A similar situation arose in this Court's decision in *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984). There, Monsanto claimed that an Environment Protection Agency regulation, under which certain proprietary data of Monsanto had to be revealed to third

parties, constituted a "taking." This Court noted that a "reasonable investment-backed expectation" must be more than a "unilateral expectation or an abstract need." 467 U.S. at 1005, 104 S.Ct. at 2875. Then, this Court rejected Monsanto's claim because Monsanto had known of the regulations prior to the supposed "taking":

> Thus, as long as Monsanto is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate government interest, a voluntary submission of data by an applicant in exchange for the economic advantages of a registration can hardly be called a taking.

81 U.S. at 1007, 104 S.Ct. at 2876. Similarly, Chevron knew of the Louisiana lien statute long before the Wunsch transactions occurred and, as discussed before, the Louisiana Oil Well Lien Statute was a rational exercise by the legislature. The benefits and advantages received by Chevron, in addition to its privilege of doing business in the development of Louisiana's natural resources, are also outlined in the previous section of this brief.

The second standard examines the character of the government action. In other words, if the challenged action is simply "some public program adjusting the benefits and burdens of economic life to promote the common good", such as in the present case, then the statute is more likely to pass constitutional muster. *Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978). The rationale for this approach was explained in *Penn Central*:

> "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law," *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322 (1922), and this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values.

438 U.S. at 124, 98 S.Ct. at 2659. The character of the action in the present case is even more innocuous because the government action (i.e., the passage of the Louisiana Oil Well Lien Statute) occurred prior to Chevron's development of any value or expectation in the Wunsch lease. Thus, the value which Chevron paid for the Wunsch lease was established because of, or in spite of, the facilitation of the oil and gas industry made possible by the Louisiana Oil Well Lien Statute.

Before proceeding to appellant's equal protection argument, brief mention must be made of a case which appellant urges is close factually and legally. *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922). In that case a mining company had obtained certain contractual mining rights which a *subsequent* statute invalidated. Certainly the facts are similar in general terms because they deal with a form of mining of natural resources, but the similarity ends there. In the present case, unlike *Pennsylvania Coal,* the government action occurred long *before* Chevron acquired any rights.

The bottom line is that there has been no "taking" because the economic impact was expected and, in fact, contemplated. Furthermore, the character of the governmental action was merely of the type to regulate economics and involved no intrusive acts by the government.

2. APPELLANT'S POSITION THAT THE LOUISIANA OIL WELL LIEN STATUTE HAS DEPRIVED APPELLANT OF EQUAL PROTECTION OF THE LAWS IS UNSUBSTANTIAL.

Just as with substantive due process, and as explained in some detail below, this Court has established a very defferential approach in examining the effect of state regulations, particularly economic regulation, in the context of equal protection. *Western and Southern Life Insurance Co.* v. *State Board of Equalization,* 451 U.S. 648, 101 S.Ct. 2070, 68 L.Ed.2d 514 (1981); *McGowan* v. *Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6

L.Ed.2d 393 (1961); *Williamson* v. *Lee Optical of Oklahoma, Inc., supra; Wilson P. Abraham Construction Corp.* v. *Texas Industries, Inc.*, 604 F.2d 897 (5th Cir. 1979). In such cases, the courts invoke a "rational relation" analysis. *See e.g., Western and Southern Life Insurance Co., supra.* As lower courts in the present case and the *JHJ* case have noted, the Louisiana Oil Well Lien Statute is "purely economic legislation." *JHJ Limited I* v. *Chevron, supra,* 617 F. Supp. at 734; *Lor, Inc.* v. *Martin Exploration Co., supra,* 489 So.2d at 1332.

Although appellant does not question in its Jurisdictional Statement that the Louisiana Oil Well Lien Statute is purely economic, appellant essentially requests that this Court overturn its previous case-law and find that "strict scrutiny" analysis, and not the "rational relation" test, be applied. Relying on *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), which dealt not with equal protection but only with statutory interpretation, appellant asserts that any time a property right is adversely effected by a state regulation, this Court should find that a fundamental right has been violated and "strict scrutiny" equal protection analysis should be invoked. Without belaboring the point, appellant's position cannot be adopted for several practical reasons. First, it is likely that the majority of lawsuits filed involve some form of property interest which one party or another believes has been adversely impacted by government action. Second, if courts were required to undertake "strict scrutiny" analysis each time a property right were involved, there would be very little need for the legislative branch of government. *Williamson* v. *Lee Optical of Oklahoma,* 348 U.S. at 489, 75 S.Ct. at 465. In other words, appellant's position is not only unsupported by any authority, but its view is undesirable and unworkable.

At any rate, because the Louisiana Oil Well Lien Statute is economic regulation, the established precedent of this Court

dictates that the "rational relation" test be employed. The test involves two steps:

> In determining whether a challenged classification is rationally related to achievement of a legitimate state purpose, we must answer two questions: (1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose? *See Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S., at 461-463, 101 S.Ct. at 722-723; *Vance* v. *Bradley*, 440 U.S. 93, 97-98, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979)

Western and Southern Life Insurance Co., supra, 451 U.S. at 668, 101 S.Ct. at 2083.

Appellant has admitted that the lien statute serves a legitimate purpose. Appellant's Jurisdictional Statement at 24. So the only inquiry relates to the second step — was the legislature reasonable? The key to the second step of the "rational relation" analysis is whether there is any conceivable basis for the legislature to have believed its action would promote the purposes of the statute. *Western and Southern Life Insurance Co., supra*, 451 U.S. at 672, 101 S.Ct. at 2085. As Professor Laurence H. Tribe has summarized this issue:

> In applying the rationality requirement, the Court has ordinarily been willing to uphold any classification based "upon a state of facts that reasonably can be conceived to constitute a distinction, or difference in state policy . . . ." This remarkable deference to state objectives has operated in the sphere of economic regulation quite apart from whether the conceivable "state of facts" (1) actually exists, (2) would convincingly justify the classification if it did exist, or (3) has ever been urged in the classification's defense by those who either promulgated it or have argued in its support. Often only the Court's imagination has limited the allowable purposes ascribed to government. In *Kotch* v. *Board of River Port Pilot Commissioners*, for example, the Court upheld the constitutionality of a Louisiana law conditioning license as a harbor pilot upon completion of an apprenticeship term, against the allegation that incumbent pilots, exercising unfettered discretion,

> selected "with occasional exception, only [their] relatives and friends" to serve as apprentices. While acknowledging the controversial nature of nepotism in the civil service, the Court sustained the law on the ground that "the benefits to morale and *esprit de corps* which family and neighborly tradition might contribute . . . *might* have prompted the legislature to permit Louisiana pilot officers to select those with whom they would serve."

L. Tribe, American Constitutional Law §16-3 (1978). Put another way, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations . . . that the question is at least debatable.' " *Western and Southern Life Insurance Co., supra,* 451 U.S. at 674, 101 S.Ct. at 2086.

As a result, appellant has no constitutional argument here because appellant cannot deny that the action taken by the legislature is at least debatable. Indeed, as discussed in the previous section of this brief relating to due process, the legislature's course of action was probably the most rational means of fulfilling its legitimate interest to protect laborers and materialmen, to promote the exploration of oil and gas, and to encourage development of the state's natural resources. It is logical and rational that the statute provides that the lien exists on the entire drill site lease, as opposed to only a part of the drill site lease and as opposed to other leases in the unit. The owner of the drill site lease stands to benefit more than the others. The property's value is enhanced by the location of a productive well on it. From a geological evaluation standpoint more information is obtained on a well site lease, and this is true even if the well is a dry hole. This is true because most units are like the S Unit in the present case in that they are simply "geometric units" that are formed by the Commissioner because the geology is so inexact in discerning the exact shape and size of reservoirs. Only after many years and many wells will the Commissioner grant the formation of a "geological unit" which takes the shape of the exact location

and size of a reservoir. Finally, the materialmen and laborers will be protected in many cases only if their lien attached to the entire lease as specified by the legislature. If appellant's position of what the legislature should have provided in the statute is accepted, the very purpose of the lien statute will be foiled. For these reasons there is clearly sufficient rationale for the state to allow a lien under the lien statute to be based on the lease where the well is located. Chevron thus has not been denied equal protection under the law.

In summary, appellant agrees that the Louisiana Oil Well Lien Statute serves a legitimate purpose and there is more than a conceivable basis that the legislature rationally believed the statute would further its legitimate interest. Equal protection has not been violated.

CONCLUSION

Wherefore, appellees respectfully submit that the questions upon which this case depend are so unsubstantial as not to need further argument, and appellees move the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of the State of Louisiana.

Respectfully Submitted:

EDWARD D. WEGMANN
THOMAS A. CASEY, JR.
JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE
201 St. Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-8000
Counsel for Appellees,
Lor, Inc.,
Newpark Pipe & Supply, Inc.,
Newpark Waste Treatment Systems, Inc.,
Newpark Fluid Services, Inc., and
Guillory Tank Truck Services, Inc.

CERTIFICATE OF SERVICE

I, Edward D. Wegmann, one of the counsel of record for appellees, Lor, Inc., Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc., and Guillory Tank Truck Services, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of February 1987, I served three copies of the foregoing Motion to Dismiss for Want of a Substantial Federal Question on each of the several parties thereto as follows:

On the Honorable William J. Guste
Attorney General of the State of Louisiana
Department of Justice
234 Loyola Avenue
New Orleans, Louisiana 70112

On F.F.K. Gas & Oil Properties, etc.,
Martin Exploration Company, and
Chevron U.S.A., Inc. in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

Mr. John Dale Powers
P.O. Box 15948
4156 South Sherwood Forest Boulevard
Baton Rouge, Louisiana 70895
Attorney for F.F.K. Gas & Oil Properties, etc.

Ms. Jan Marie Hayden
Brodtmann, Heller, Feldman, Steinberg & Berins
624 Whitney Bank Building
New Orleans, Louisiana 70130
Attorney for Martin Exploration Company

Mr. Oliver P. Stockwell
Stockwell, Sievert, Viccellio, Clements & Shaddock
P. O. Box 2900
Lake Charles, Louisiana 70605
Attorney for Chevron U.S.A. Inc.

It is further certified that all parties required to be served have been served, and that the list of counsel for such parties is as set forth above.

EDWARD D. WEGMANN
JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE
201 St. Charles Avenue
New Orleans, Louisiana 70170
Telephone: (504) 582-8000

Supreme Court
FILED
MAR 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1198

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSES

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

REPLY OF CHEVRON U.S.A. INC. TO MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION FILED BY APPELLEES

Of Counsel:

D.A. MOLONY
PATRICIA A. MATHES
Chevron U.S.A. Inc.
935 Gravier Street
New Orleans, Louisiana 70112

OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL
Stockwell, Sievert, Viccellio
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491

Counsel for Appellant,
Chevron U.S.A. Inc.

March 1987

NO. 86-1198

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LOR, INC.,
NEWPARK PIPE & SUPPLY, INC.,
NEWPARK WASTE TREATMENT SYSTEMS, INC.,
NEWPARK FLUID SERVICES, INC., AND
GUILLORY TANK TRUCK SERVICES, INC.

VERSES

CHEVRON U.S.A. INC.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

REPLY OF CHEVRON U.S.A. INC. TO MOTION TO DISMISS FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION FILED BY APPELLEES

OPINIONS BELOW AND RELATED CASE

The Jurisdictional Statement filed by appellant correctly sets forth the opinions rendered by the trial court (Appendix C to the Jurisdictional Statement), The Louisiana First Circuit Court of Appeal (Appendix B to the Jurisdictional Statement; also appears at 489 So.2d 1326), and the denial of appellant's writ application by the Louisiana Supreme Court (Appendix A to the Jurisdictional Statement; also appears to 493 So. 2d 1217).

In their motion, appellees state that "the highest Louisiana Federal Court," in the related case of *JHJ Limited I v. Chevron U.S.A. Inc.*, 806 F.2d 82 (5th Cir. 1986), has now rejected appellant's constitutional arguments. The related case was affirmed, under the Erie Doctrine, *without* considering the federal constitutional questions. However, a writ application to this Court will be timely filed by appellant along with a motion to consolidate the cases.

THE LOUISIANA OIL, GAS AND WATER WELLS LIEN STATUTE APPLIES TO WATER WELLS AND IS AN ACKNOWLEDGEMENT THAT THE LOUISIANA LEGISLATURE NEVER CONSIDERED THE CONFLICT BETWEEN IT AND THE LOUISIANA CONSERVATION ACT

The text of the Louisiana Oil, Gas and Water Wells lien statute, LSA-R.S. 9:4861, et seq., is set forth in appellant's Jurisdictional Statement. The true intention of the Louisiana legislature in the enactment of that statute is evident. Contrary to appellees' claim, the purpose of the statute is not solely the protection of suppliers of equipment, materials, and services in the drilling operations of *only* oil or gas wells. The statute is clearly intended to protect suppliers who contributed equipment, materials, and services in the drilling of a water well.

The water well portion of the statute is critical because it reflects the Louisiana legislature's true intention in enacting the statute, and the scope of the lien which was contemplated. Appellees urge that their liens affect appellant's share of production from oil and gas wells *off* the Wunsch lease. They then argue, inconsistently, that the Louisiana Conservation Act and the principle of unitization do no affect the provisions of the Louisiana Oil, Gas and Water Wells lien statute. In truth, the Louisiana legislature never contemplated the overlap between the statutes.

The inconsistency of appellee's argument is apparent. The Louisiana Oil, Gas and Water Wells lien statute also contemplates protection of suppliers of equipment, materials and services to the drilling of *water* wells. However, the Louisiana Conservation Act, particularly LSA-R.S. 30:9, establishes the principle of unitization to control the location and drilling of *only* wells for oil or gas, as defined by LSA-R.S. 30:3. Forced drilling units are not created for the drilling of *water* wells. Suppliers to a water well on a lease which overlaps separate drilling units for oil and gas established by

the Louisiana Commissioner of Conservation would not have a lien upon the lessee's production of oil and gas or water from wells *off* the lease on which the water well is drilled.

The statute was not intended to favor suppliers to an oil or gas well over suppliers to a water well. There is nothing in the statute that indicates any difference between persons who supply equipment, material or services in the drilling of a water well and of an oil and gas well. The result of appellees' argument is based on the erroneous premise that suppliers of equipment, materials and services in the drilling of an oil and gas well have greater rights under the statute than those who supply water wells. This argument is made by appellees in an effort to impact appellant's share of production from oil and gas wells located *off* the Wunsch lease in three (3) different units. Such an argument or conclusion unconstitutionally deprives appellant of its property and rights.

The rights granted by the Louisiana Oil, Gas and Water Wells lien statute should be no greater for suppliers to oil and gas wells than for suppliers to water wells.

LOUISIANA'S COURTS RECOGNIZED THE EXISTENCE OF THE CONSTITUTIONAL ISSUES ASSERTED BY APPELLANT

The trial court, the 21st Judicial District Court in and for the Parish of Livingston, considered appellant's consititutional arguments and held that, if the liens claimed by appellees were extended to any portion of appellant's Wunsch lease outside the S Unit, the Louisiana Oil, Gas and Water Wells lien statute would be unconstitutional as applied. Appendix C to appellant's Jurisdictional statement at 14a.

In denying the appellant's writ of certiorari and/or review, one member of the Louisiana Supreme Court would have granted the writ. Appendix A to appellant's Jurisdictional Statement; also appears at 493 So.2d 1217.

In denying appellant's Motion to Stay Proceedings in the Trial Court Pending Appeal to the United States Supreme Court, two justices of the Louisiana Supreme Court would have granted the stay. (Appendix A hereto).

Three different justices (out of seven) of the Louisiana Supreme Court apparently considered that this case involves serious constitutional questions, as did the trial court. This further strengthens appellant's argument that this Court should consider this appeal.

CONCLUSION

The Jurisdictional Statement filed by appellant correctly stated the facts as found by the trial court. There is no dispute over these facts, although some incorrect conclusions were drawn from them, as demonstrated in our Jurisdictional Statement.

Appellees offers no new arguments which would preclude this Court from accepting this appeal and fixing it for argument.

In view of the fact that a petition for a writ of certiorari will be filed in *JHJ Limited I v. Chevron U.S.A. Inc., supra,* involving the identical legal issues raised in this appeal, the Court should consider withholding action until the petition for a writ of certiorari is filed and a motion for consolidation is presented.

Respectfully submitted,

OLIVER P. STOCKWELL
EMMETT C. SOLE
H. ALAN McCALL,
Stockwell, Sievert, Viccellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602
(318) 436-9491

COUNSEL FOR APPELLANT,
CHEVRON U.S.A. INC.

CERTIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF THE UNITED STATES

I, Oliver P. Stockwell, one of the counsel of record for Chevron U.S.A. Inc. appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of March, 1987, I served three (3) copies of the foregoing reply on each of the several parties thereto, as follows:

BEST

On the Honorable William J. Guste, Jr. Attorney General of the State of Louisiana, Department of Justice, 234 Loyola Avenue, New Orleans, Louisiana 70112.
On LOR, Inc. Newpark Pipe & Supply, Inc., Newpark Waste Treatment Systems, Inc., Newpark Fluid Services, Inc. Guillory Tank Truck Servies, Inc., F.F.K. Gas & Oil Properties, et al, and Martin Exploration Co., in properly addressed envelopes with first class postage prepaid to each of their respective counsel of record, as follows:

Mr. Edward D. Wegmann
Jones, Walker, Waechter, Poitevent
Carrere & Denegre
Attorneys for LOR, Inc., et. al.
Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana 70170

Mr. John Dale Powers
Attorney for F.F.K. Gas & Oil Properties, et al
Post Office Box 15948
4156 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70895

Ms. Jan Marie Hayden
Brodtmann, Heller, Feldman, Steinberg
& Berins
Attorney for Martin Exploration Co.
624 Whitney Bank Building
New Orleans, Louisiana 70130

It is further certified that all parties required to be served have been served, and that the list of the counsel for such parties is as set forth above.

OLIVER P. STOCKWELL
Stockwell, Sievert, Vicellio,
Clements & Shaddock
Post Office Box 2900
Lake Charles, Louisiana 70602

AVAILABLE COPY

APPENDIX A

CHIEF JUSTICE
JOHN A. DIXON, JR.
ASSOCIATE JUSTICES
PASCAL F. CALOGERO, JR.
WALTER F. MARCUS, JR.
JAMES L. DENNIS
JACK CROZIER WATSON
HARRY T. LEMMON
LUTHER F. COLE
CLERK OF COURT
FRANS J. LABRANCHE, JR.

Supreme Court
STATE OF LOUISIANA
New Orleans

December 11, 1986

301 LOYOLA AVE., 70112
TELEPHONE 504-568-5707

Oliver P. Stockwell, Esq.
STOCKWELL, SIEVERT, VICCELLIO,
CLEMENTS & SHADDOCK
P.O. Box 2900
Lake Charles, La. 70602

In Re: Lor, Inc. vs. Martin Exploration Co. et al
No. 86-C-1259

Dear Mr. Stockwell:

This is to advise that the Court took the following action on your Motion to Stay Proceedings in the Trial Court Pending Appeal to the United States Supreme Court in the above entitled matter,

"Denied. No apparent Federal Question
WATSON & COLE J.J. would grant the stay."

With kindest regards, I remain,

Very truly yours,

Frans J. Labranche, Jr.
Clerk of Court

FJLJr/rd
ccs: Emmett C. Sole, Esq.
Edward D.Wegmann, Esq.
R. Patrick Vance, Esq.
Edward B. Poitevent, Esq.